



# Guide to Court Records

*Bibliothèque  
et Archives  
nationales*

Québec



BIBLIOTHÈQUE  
ET ARCHIVES NATIONALES  
DU QUÉBEC

**Guide  
to Court  
Records**

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# Introduction

In 2014, Bibliothèque et Archives nationales du Québec (BAnQ) kept close to 21 kilometres of court records in its nine archives centres. These records date back to the middle of the 17th century and are enriched by transfers from the court houses, at a rate of 4% increase annually, generally thirty years after the records were produced. They constitute an aggregate of fonds of remarkable historical depth and continuity, allowing researchers to follow the evolution of Québec society from its beginnings up to the present. Produced by courts sitting across the entire province of Québec, these records are kept in the archives facilities responsible for the regions where they originated. They therefore offer not only a source that bears witness to the historical evolution of many phenomena, but also to Québec's regional diversity. Like a window revealing an oft surprisingly detailed view of the past, these records shed light on a wide variety of phenomena, be it on particular individuals and specific events, or on broader social, economic and political themes, including, of course, the way in which justice was administered.

Striving to make these important records as accessible as possible, BAnQ has devoted considerable efforts over the last thirty years to processing these documents, notably in producing a unified classification scheme, in preparing reference tools and in describing their scope and contents, in accordance with the Canadian Rules for Archival Description (RAD). Members of the public can now familiarize themselves with the nature and structure of Québec's court records via the PISTARD data base. Available on the Web and in the reading rooms of BAnQ's archives facilities, PISTARD contains a great deal of information on the history of various courts, on the geographic distribution of their activities, on the nature of their powers and on the records produced by court officials over the centuries.<sup>1</sup>

However, since PISTARD offers access by fonds, each one representing a specific court, whose constitutive laws define its territorial and chronological limits, this data base cannot provide researchers with a global view of the evolution of Québec's courts and their documentary production for the last four centuries. Nor can it direct a researcher to the fonds that meets his or her needs or explain the features of the most common groups of documents produced by court clerks. Yet an understanding of how the organization of court structures and court records has evolved over time can greatly facilitate research. Only a general guide to court records can thus assemble the information needed to give researchers the framework for understanding this source. The present guide will be even more useful in that it will apply to court records in whichever archives' facility they may be kept. We hope that this guide will facilitate research in these remarkably rich but complex records and will help researchers to become even more independent and determined to mine their depths.

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1. New descriptions are constantly being added to the on-line catalogue, PISTARD, in accordance with the priorities and capacities of BAnQ's archives facilities.

The present guide is divided into five sections and includes five appendices. In the first section, it explains how courts are identified: BAnQ's classification scheme, the evolution of the judicial apparatus, and a brief sketch of some typical descriptions of a few major courts. In the second section, the habitual structure of court records is examined: the hierarchy of the classification scheme, the context of production of the principal types of documents, their nature and their limits. Some examples are presented. The third section addresses the question of research in court records: the various paths to take and their requirements, how to trace a particular kind of document, the logic and limits of the finding aids produced by court clerks, the information needed to locate records and some ways to make up for their absence or deficiencies, as well as the existence of some more recent and more effective finding aids. The fourth section deals with restrictions to access, most notably in the case of adoptions, of Youth Court records, of pardons, acquittals and absolutions, as well as court orders of non-publication and on in camera hearings. As to the fifth and final section, it explains the impact of court retention schedules on court records, more specifically as regards the sampling of case files and the transfer of court records of permanent value. Finally, the appendices and a bibliography offer detailed information on several aspects of the history of the courts and the structure of their records.

# 1

## **Identifying Québec's Courts**

## 1.1 The notion of the archival fonds for court records at Bibliothèque et Archives nationales du Québec

The basic unit of description for archives is the fonds, which constitutes the whole body of documents of all kinds automatically and organically assembled by an administrative body or by a physical or legal person in the exercise of its activities or functions and whose evidential or informational value justifies permanent conservation.<sup>2</sup>

At BAnQ,<sup>3</sup> the first step in the creation of a classification scheme for court records was to determine the various judicial fonds, each one corresponding to a specific court, established by an organic law which outlined its responsibilities and its territorial jurisdiction and sometimes other aspects of its structure or operation.<sup>4</sup> The effort to distinguish clearly the fonds of Québec's courts involved two major challenges. Firstly, the abolition of a court and its replacement by another tribunal does not automatically lead to the creation of a new fonds. Sometimes, government tinkering with court structures only involves a change of name, with no change in the court's powers and activities. In this case, when there is an "indisputable and total continuity" in the court's jurisdiction,<sup>5</sup> the fonds remains the same, although it will then carry its most recent name.<sup>6</sup> However, this is rarely the case. The best example of this exceptional situation is that of the General and Quarter Sessions of the Peace, whose name undergoes several variations from 1763 to 1908, without their nature and authority changing at all.<sup>7</sup> On the other hand, the government often modifies both the name and the authority of a court simultaneously, and sometimes it keeps the name of a court while changing its responsibilities. In such cases, changes in overall court structures can lead BAnQ to create separate new fonds, even though the names of the new courts resemble those of their predecessors. Researchers should thus not be surprised to see several distinct fonds which have the same name or very similar names. For example, consider the Common Pleas or the various courts of King's or Queen's Bench.<sup>8</sup>

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2. This definition comes from the Archives Act, Québec Laws, 1984, chapter A-21.1

3. In speaking of the role of BAnQ with regards to its court records, note that the relevant institution was in fact the Archives nationales du Québec (ANQ), up until their merger with the Bibliothèque nationale du Québec in 2006 which resulted in the inception of BAnQ.

4. For example, acts of judicature often specify when and where the court will sit.

5. The term "jurisdiction" appears often within this guide. It is important to point out here the various ways in which this term is used. Normally, the word "jurisdiction" has several meanings, notably that of "the power to judge or render justice," of "the (geographical) extent and limit of this power" or even that of a "court or a group of courts of the same category or degree of authority." The classification scheme for court records at BAnQ uses the concept of the territorial limits of a tribunal's power initially for the determination of the class and division of each fonds. Then BAnQ has chosen to use the term with same meaning given to it by the court clerks and the court administrative services in their management of court records, to designate "a distinct body of documents, assembled for administrative reasons" (see section 2.1.3 of this guide). However, court clerks also use "jurisdiction" as a synonym of "authority," that is to say, of the recognized authority of a court to hear a case either in terms of its nature or of geographic boundaries. This guide will occasionally use the term in all its varied meanings, but the context usually makes the desired meaning quite clear.

6. See Archives nationales du Québec, *Normes et procédures archivistiques des Archives nationales du Québec*, 6e éd., Québec, Gouvernement du Québec, 1996, standard 144.

7. Note however that this situation changes in 1908, when the change is no longer cosmetic but substantial, and a new Court of the Sessions of the Peace replaces the former general and quarter sessions of the peace. In fact, no court persists without changes in its jurisdiction from the beginning of the British Regime to the present. The vast majority of judicial reforms are not simply cosmetic and mostly result in the creation of new fonds.

8. A few examples will be discussed in detail in section 1.2.2.



The territorial limits of a court's jurisdiction have a considerable impact on the creation of its records. A court with local jurisdiction normally sits in a single place and the production, organization and preservation of its documents is confined to a single court house. On the other hand, a court with provincial jurisdiction can sit in several places, and normally each distinct court house organizes and preserves the production of that court in the area it serves. In the first of these two scenarios, the production of a court house is the archival fonds; in the second, it is a series within a fonds. A rigorous analysis of the organic law creating a court allows the archivist to establish precisely to which group it belongs. These two categories correspond to the two divisions of the "T" class ("T" for tribunal—the class of judicial power, in BAnQ's general classification scheme): "TP" for the tribunals with jurisdiction over the entire province and "TL" for courts with a local, more limited, territorial jurisdiction.

The common classification scheme for court records at BAnQ thus includes lists of the fonds in each division of the class T. These lists are open not only because the government can always create new courts or modify whole sections of the judicial system,<sup>9</sup> but also because the court records of the past have not all yet been unravelled one from the other by BAnQ's archivists. A glance at appendices 1 and 2 shows that the judiciary has undergone a slow transformation over the centuries. For more than two hundred years overlapping the French and British Regimes, almost all the tribunals have limited, local territorial jurisdictions. The notable exception is, logically, the court of last resort in the colony. In the middle of the nineteenth century, a trend towards courts of provincial jurisdiction begins with the establishment of the Superior Court, the Circuit Court and the Court of Queen's Bench in 1850. This trend will undergo timid expansion at the beginning of the twentieth century with the creation of the Court of the Sessions of the Peace; however, magistrate's courts will remain local in jurisdiction until the Second World War. The trend away from local jurisdictions will accelerate during the Quiet Revolution, arriving at an apogee with the establishment of a unified trial court for inferior civil and criminal matters in 1988. Today, only municipal courts have territorially limited local jurisdiction.

## 1.2 An overview of the historical evolution of the judicial apparatus

### 1.2.1 The French Regime and the military interregnum

The courts of the French Regime represent the starting point of the classification scheme for court records at BAnQ. The judicial hierarchy is relatively simple in this era. The only tribunal with jurisdiction over the entire colony is the Sovereign Council, which combines the functions of a trial court with those of a court of appeals; it can hear cases in all sectors of the law. The local royal courts are the Prévôté de Québec and the Juridictions royales of Montréal and of Trois-Rivières. These tribunals were courts of first instance for all cases, civil and criminal, within the limits of their respective territories. They also heard appeals from the seigniorial courts within their territories. Finally, the seigniorial courts were courts whose jurisdiction was limited to the territory covered by the seigniorie where each one sat. In New France, they generally only had authority over what was called *basse justice*, or inferior matters, mostly of a civil nature.<sup>10</sup>

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9. The government reformed the courts as recently as 1988, with the creation of the Court of Québec.

10. We will not enter here into a discussion of the nature of seigniorial justice: instead, interested readers can use the bibliography of this guide as a starting point for more detailed explanations of justice in New France.

Between 1760 and the inauguration of a British civil government in 1763, the British military commanders established superior and inferior courts of local jurisdiction in the three districts (*gouvernements*) of Québec City, Montréal and Trois-Rivières. These military councils and chambers of militia rendered summary decisions on all cases, while trying to respect the laws and customs of the country. They left few records and it could be assumed that the population tried to avoid having recourse to these courts if possible, preferring local mediation to judicial intervention in a period when the fate of the colony was still undecided.

### 1.2.2 The British Regime

Originally, the British government wanted to provide its new colony with a simple system of justice modelled on English court structures. The governor and his council formed the court of appeals, and the government established a single superior trial court for the whole province, rendering justice according to English law, both civil and criminal: the Court of King's Bench (the first of many tribunals with this name, none of which had quite the same authority). Moreover, in order to serve the need for local administration and deal with inferior matters, the government introduced into the colony one of the fundamental institutions of the local administration of justice in Great Britain: the justice of the peace. These justices held a mixed criminal and civil jurisdiction over matters of modest import and also had administrative responsibilities of a municipal nature. When several j.p.s sat together, they constituted weekly sessions and quarter sessions of the peace. However, fearing a strong reaction of the population to the imposition of English civil law, the governor also established a trial court for inferior civil matters, the Court of Common Pleas, which was to apply the law of the land and equity, to the degree that such principles did not contradict English law, in cases where the amount in dispute did not exceed ten pounds sterling. Thus the basic distinctions that can be found in the nineteenth and twentieth centuries appear here: a division between tribunals dealing with “inferior” and “superior” matters, according to the severity of the offenses or the amount of money involved. In addition, the Court of Common Pleas represents the first tribunal without mixed jurisdiction, as it could hear only civil cases.

There would be multiple reforms of this initial court structure over the following years. After the restoration of *canadien* civil law by the Québec Act in 1774, the Court of King's Bench lost its civil jurisdiction and the courts of Common Pleas for the districts of Québec City, Montréal and Trois-Rivières exercised authority over the whole range of civil cases, both superior and inferior. Twenty years later, in the wake of the adoption of the Constitutional Act, courts of King's Bench of local territorial jurisdiction took the place of the courts of Common Pleas and also held criminal assizes, while leaving less serious offenses to the justices of the peace assembled in courts of General or Quarter Sessions of the Peace. Moreover, in some districts designated as “inferior,” the government established a provincial court, with jurisdiction over inferior civil matters, which would eventually be replaced by a court of King's Bench whenever the region was sufficiently populated.<sup>11</sup>

Things remained fairly stable until the Act of Union, when the government indulged in several efforts to change the administration of justice, most especially for inferior civil matters, where courts of Request, District and Division courts and Circuit courts appeared and disappeared in rapid succession. A decade of reforms was crowned by a fundamental and lasting recasting of the

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11. This was the situation for the provincial courts in Trois-Rivières (1794-1830), in Gaspé (1794-1843) and in the district of Saint-François in the Eastern Townships (1823-1841).

judiciary in 1849. The Superior Court (the same one which still exists today) assumed authority over superior civil matters for the entire province. A new Court of Queen's Bench was established, this time with authority over the whole province rather than a local jurisdiction. It was to act simultaneously as the court of appeals and as the trial court for superior criminal offenses. Once again, the government left inferior criminal offenses in the hands of the justices of the peace assembled in General Sessions of the Peace, as well as in Weekly and Special Sessions in the cities of Québec, Montréal and Trois-Rivières.

The last major changes in the pre Confederation period were effected at the same time as the massive decentralization of the administration of justice carried out in 1858 with the creation of nineteen judicial districts. Firstly, the government decided not to hold any General Sessions of the Peace outside of Montréal and Québec City, believing that the work of local j.p.s combined with criminal assizes held by the Court of Queen's Bench would be sufficient for the less populated districts. A few years later, in 1864, it was decided to compensate for the fact that there was only one judge for the Superior Court for each district by instituting an intermediate appellate procedure. Three judges of the Superior Court could then sit in revision of the decision of a single judge of the same court. This "Revision Court" allowed more rapid challenges and lower costs than the Court of Queen's Bench (appeal side). This intermediate appellate procedure was abolished in 1920.

### 1.2.3 The Province of Québec in the post-Confederation period

There was no immediate change in court structures in the wake of the adoption of Confederation, although the creation of the Supreme Court of Canada in 1875 added this tribunal into the hierarchy of appeals, inserting it between the Court of Queen's Bench of Québec and the Judicial Committee of the Privy Council in London.<sup>12</sup> Note however that the judges of the Superior Court were appointed by the federal government and that these judges also sat in the Circuit court. This soon became a motive for reform, as provincial politicians would have also liked to have the ability to reward faithful partisans with appointment to the judiciary. In 1869, the provincial government passed a law providing for the appointment of district magistrates, with the same power as two or more justices of the peace.<sup>13</sup> This law granted to district magistrates a part of the inferior civil jurisdiction already exercised by the Circuit Court. Then, at the beginning of the 1870s, the provincial government established many local Magistrate's Courts, with mixed criminal and civil jurisdiction, often in the same towns where the Circuit Court sat. These courts did not survive for long and in 1878, the government abolished most of the Magistrate's Courts, except for those that had been set up in less populated areas, with poorer road networks, notably in the Eastern Townships, the Saguenay, the Gaspé peninsula and the Lower Saint-Lawrence region. Similar attempts in 1888 and 1890 also aimed to replace the Circuit Court sitting in Montréal with a special Magistrate's Court for the district of Montréal. These two legislative initiatives failed because the federal government disallowed them. However, a compromise solution led to the creation of a local Circuit Court for Montréal in 1893, with its own judges, who were nonetheless appointed by the federal government.<sup>14</sup>

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12. It is only in 1949 that the Supreme Court of Canada becomes the court of last instance for Canadian litigants.

13. Legislation on justices of the peace accorded certain powers to a j.p. sitting alone, a greater range of authority to two judges sitting together and even more power to three or more judges assembled. The magistrate could thus exercise a broad range of the powers granted to j.p.s.

14. Judges named solely for the Circuit Court were essential in Montréal because of the heavy case load there both for the Superior Court and the Circuit Court. Indeed, the judges of the Superior Court could not cope alone with so much work.

The provincial government renewed its efforts to create courts with provincially appointed judges at the beginning of the 1920s, when cordial relations reigned at both levels under the leadership of William Lyon Mackenzie King and Louis-Alexandre Taschereau. Taschereau carried out a gradual dismantling of the Circuit Court in favour of local magistrate's courts. A modification of the Code of civil procedure in 1921 increased the extent of the civil jurisdiction of the magistrate's courts until it was identical with the inferior jurisdiction of the Circuit Court.<sup>15</sup> The next year, the provincial government granted to magistrate's courts sitting in the same towns as the Circuit Court the right to substitute their authority to that of the Circuit Court. Thus, the government quietly relieved the Circuit Court of the majority of its case load, without openly abolishing it, and risking direct confrontation with the federal government. In fact, the provincial government created numerous Magistrate's Courts from 1922 on, and the Circuit Court became a marginal court outside the chief towns of the districts, where it ceased functioning completely.<sup>16</sup> The official abolition of this court takes place only in 1953, although it had become obsolete much earlier.

The Magistrate's Courts did not only function as trial courts for lesser civil matters, but also acted as courts of inferior criminal jurisdiction. Indeed, district magistrates filled the role of justices of the peace holding Special Sessions of the Peace. When the judiciary was decentralized in 1858, the government had ceased holding General and Quarter Sessions of the Peace, except in the districts of Montréal and Québec City, believing that the combined action of the justices of the peace and the Court of Queen's Bench (criminal side) would suffice for dealing with existing crime. However, the growth of criminality in Montréal and Québec City during the first half of the nineteenth century had already led to the appointment of permanent salaried police magistrates. After Confederation, the needs of these two large cities led to the appointment of "judges of the sessions" with all the powers formerly exercised by several justices of the peace and with jurisdiction over the whole province, but sitting generally in General and Quarter Sessions of the Peace in Montréal or in Québec City. In 1908, the government finally established an inferior criminal trial court with provincial rather than local jurisdiction. It was called the "Court of the Sessions of the Peace," sat all year round and exercised all the authority of the old Courts of General and Quarter Sessions of the Peace, without actually eliminating the possibility of holding these traditional tribunals. Initially this new court was established only in Montréal and Québec City. The statute creating it did authorize the Lieutenant-Governor to allow it to sit elsewhere, by decree, but the government did not make use of this right prior to 1945 and did not implant this court in all the judicial districts until 1957. The face of the criminal justice system thus seems confused during the first half of the twentieth century, with the overlapping of the activities of the Court of King's Bench, the Court of the Sessions of the Peace and the Magistrate's Courts.

The beginning of the twentieth century also witnesses the appearance of a trend towards the creation of specialized courts, either in terms of the nature of the cases heard or in terms of the nature of the persons subject to trial. The regular courts thus gradually lose bits and pieces of their

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15. The Circuit Court had a summary inferior civil jurisdiction, called "amounts" of less than \$100, as well as a superior civil jurisdiction subject to appeal to the Superior Court, for amounts between \$100 and \$200. It also had certain powers of supervision over lesser inferior courts and municipalities.

16. Why establish this distinction between chief towns and other localities? Since 1915, the superior jurisdiction of the Circuit Court was transferred to the Superior Court in all the chief towns, some of which had already received this transfer since 1871. Thus, the power to hear cases between \$100 and \$200 had already been lost when the Circuit Court sat in a chief town. In 1946, the Code of Civil Procedure is modified again, the extent of power of the Magistrate's Courts rises to cases whose value can reach \$200 and the transfer of powers between the two types of tribunals is complete.

authority, captured by these newcomers who are sometimes courts of law and more and more simply administrative tribunals, less subject to the rigidities of habitual court procedure.<sup>17</sup>

One of the first specialized courts appeared in 1911: the Court for Juvenile Delinquents in and for the City of Montréal. A pioneer among Canadian youth courts, this local Montréal youth court was the only one of its kind in the province from 1911 to 1940, when a second local court with specialized authority over offenses committed by minors was established for Québec City. In 1950, the government abolished these two courts, replacing them with Social Welfare Courts of local jurisdiction. These new courts not only dealt with juvenile crime but also applied civil laws concerning adoption, indigents, the mentally ill and the aged. However, these courts were not established everywhere throughout the province. On the contrary, it was only during the years of the Quiet Revolution that the number of Social Welfare Courts was multiplied, the regular courts having exercised their authority in most districts until then. In 1977, the government transformed the Social Welfare Courts into the Youth Courts, increasing their authority with the Act on the protection of youth. It is only in 1988, when the Court of Québec combines the powers of all the inferior trial courts that the Chamber of Youth achieves province-wide jurisdiction, not limited to a particular district or locality.

During the last decades of the twentieth century, the government gradually eliminated all the courts of local jurisdiction, with the exception of municipal courts. In 1964, the Tribunal of the justices of the peace, of provincial jurisdiction, replaces the various local tribunals of the justices of the peace that had assumed an inferior civil and criminal authority in rural communities since the beginning of the British Regime. The Magistrate's Courts give way in 1966 to the Provincial Court. Finally, in 1988, the government unites all the former inferior trial courts in a single court with province-wide jurisdiction: the Court of Québec. The Provincial Court becomes the Civil Chamber of this new Court, the Court of the Sessions of the Peace becomes the Criminal and Penal Chamber, the various Youth Courts become the Youth Chamber and the Expropriation Tribunal becomes the Expropriation Chamber. The Tribunal of the justices of the peace, already obsolete in reality, disappears legally in 1993. Today the regular court system consists only of the Court of Appeals,<sup>18</sup> the Superior Court, the Court of Québec and the municipal courts.

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17. Note, for example, the Expropriation Tribunal, the Tribunal du travail (Labour Tribunal), la Commission de la santé et de la sécurité du travail (workmen's compensation) and the Régie du logement (Rent Control Board). The rise of specialized courts results from the growth of social law in the twentieth century.

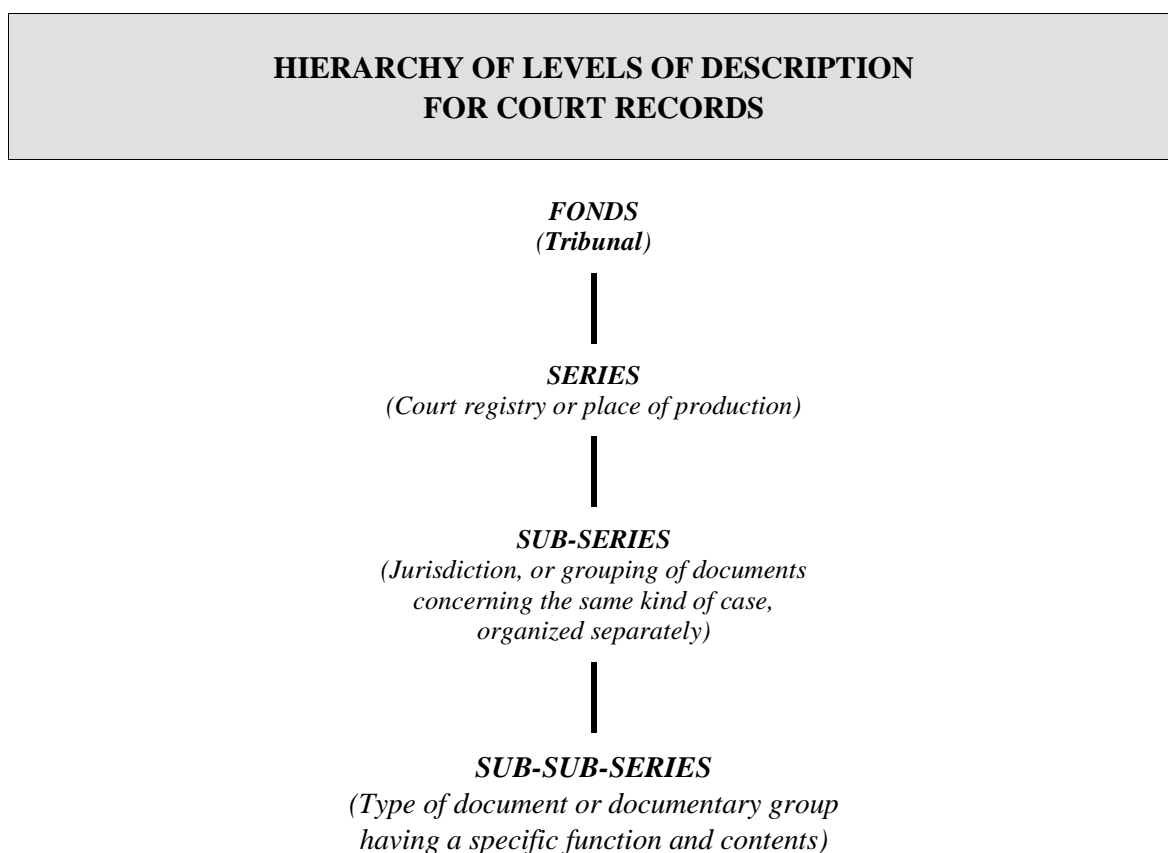
18. In 1974, the Court of Queen's Bench, which was both the appeals court and the superior criminal trial court, ceased to exist. It was replaced by the Court of Appeals on the one hand and by the criminal assizes held by the Superior Court, on the other hand.

# 2

## **The Structure of Court Records**

## 2.1 The classification scheme of Bibliothèque et Archives nationales du Québec

The magnitude and decentralized production of Québec's court records and the persistence of their basic structures over time call for a common classification scheme. Such a uniform perspective allows researchers to situate themselves in the same way among the judicial fonds of all BAnQ's archives' facilities. Initially developed in 1993 and 1994, the common classification scheme for court records at BAnQ partly arose from the structure currently used by the Department of Justice in the retention schedules of the judicial courts. This structure is characterized by four levels, as illustrated by the following diagram:



This diagram represents the four levels of description for courts of province-wide jurisdiction. For local courts, there are normally only the following three levels: fonds, jurisdiction and type of document, as local courts rarely sit in more than one place.<sup>19</sup>

Thus, for courts of local jurisdiction, the series normally becomes the jurisdiction, and the sub-series, the type of document. Each of these levels is formed by an organic, coherent grouping of documents that is described separately if the quantity of records merits it. The more detailed explanation of each level presented below allows for a better understanding of the overall structure and of the links between the four levels.

19. Among the few local courts that have sat in several places, note the Courts of Request, established in 1838 and abolished in 1841, as well as the Courts of Common Pleas, the Courts of King's Bench and the Provincial Courts, when on circuit (*en tournée*).

## 2.1.1 An overview of the description of court records (fonds)

We have already explained the problems related to identifying the fonds of judicial courts in section 1 of the present guide. The evolution of the judiciary sketched out in that section is illustrated schematically and systematically in appendices 1 through 3, which present respectively a chronological table of the judiciary (1648-1988), some “family trees” of the courts (showing the ancestors of each contemporary tribunal) and, lastly, diagrams of the hierarchy of appeals in different eras. These tools allow the researcher to find the name of the court which exercised the appropriate power during the period of interest. This name then allows him or her to find the fonds’ alphanumeric code and to have access to a more detailed description of the history of the court as well as the scope and contents of the fonds in each archives’ facility, via PISTARD.

The descriptions contained in PISTARD respect the Rules for Archival Description (RAD). The most important areas of description for the researcher are those of the administrative history and those of the scope and content of each fonds.<sup>20</sup> At BAnQ, the administrative history of judicial fonds are normally written in the same way. They begin by indicating when the court was established and by what act. They specify the geographic region served by the court and explain its initial powers as well as the major changes in those powers over time. Finally, they describe the relationship of the court to other contemporary courts in the hierarchy of appeals and mention both its predecessor and its successor.

The scope and content notes on these fonds inform the researcher about the general usefulness of each specific fonds for research as well as its specific content, as it is kept in a specific archives facility. This includes the enumeration of the series within the fonds, which corresponds to the court houses, or places of production for courts with province-wide jurisdiction (TP) and to the jurisdictions for territorially limited local courts (TL). It must be emphasized that all the information on a court and its records cannot be found in the description of the fonds, which is the most general level in the classification scheme for court records at BAnQ. The conscientious researcher should also consult the administrative histories and the scope and content notes of the lower, more precise levels, which will be explained in section 3. However, to illustrate the nature of descriptions concerning the fonds, here is the administrative history as well as the scope and content note of a court of local jurisdiction (the Court of King’s Bench for the District of Montréal) and for a court of province-wide jurisdiction (the Circuit Court).

### 2.1.1.1 The fonds of the Court of King’s or Queen’s Bench for the District of Montréal, 1794-1850 (TL19)

#### *Administrative history*

Let us mention initially that the Court of King’s Bench for the District of Montréal was created at the end of the eighteenth century, by virtue of the Judicature Act of 1793.<sup>21</sup> It combined the authority of the previous Court of King’s Bench (a court of province-wide jurisdiction sitting in Québec City and Montréal) in criminal matters with that of the Court of Common Pleas for the District of Montréal in civil matters. The Judicature Act established other courts with the same

20. The area of restrictions is also very important for the researcher, but in the context of the present guide, a complete section has been devoted to restrictions. Thus, section 4 holds more complete explanations than can be found in PISTARD. Note however that this data base does not allow the researcher to see the addresses of the containers of records whose contents are covered by a restriction on access.

21. 34 Geo. III, c. 6 (1793).



powers within the districts of Québec City and Trois-Rivières. Later, other courts of King's Bench were created in the Saint-François district, in 1830, and in the Gaspé, in 1843. From 1794 until its abolition in 1849, the Court of King's Bench for the District of Montréal had authority over one third of the province, although it lost the Eastern Township region in 1833.

A general trial court, the Court of King's Bench had power over "all cases both civil and criminal," except for those reserved to other tribunals (notably the Vice-Admiralty Court). The law gave it the right to supervise the lower courts, with appeals and evocations of cases from such tribunals to one of the courts of King's Bench. In civil matters, the Court of King's Bench of Montréal held four superior sessions (cases involving more than 10 louis) annually (also called *termes* from the English "term") and six inferior terms (summarily judged cases involving less than 10 louis). In criminal matters, it held two terms a year. When criminal cases had accumulated enough between these two annual terms, the governor could appoint special courts, called courts of oyer and terminer and courts of general gaol delivery, which had the same powers in criminal matters as the Court of King's Bench. The documents produced by the courts of oyer and terminer and general gaol delivery were intercalated with those of the Court of King's Bench, often continuing cases that the latter court had not been able to finish within the statutory term. The temporary existence of these courts and their role as substitutes for the King's Bench out of term has lead BAnQ to treat their records as part and parcel of the records of the latter court. Moreover, there is an overlapping of jurisdiction between the courts of King's Bench and the courts of the General Sessions of the Peace, although, in practice, the former deals with the most serious offenses, while the second judges minor offenses.

The Judicature Act of 1793 conferred "special powers" on the judges of the courts of King's Bench, notably that of ruling on "non contentious matters" (guardianship, trusteeship, judicial auditing, the application of judicial seals, etc.) and that of issuing writs of habeas corpus. The statute also gave them all the authority exercised by the Prévôté de Québec, the other royal courts, the intendant and the Sovereign Council during the French Regime. Wishing to expedite an important backlog of cases before the Court of Queen's Bench for the District of Montréal, the Special Council authorized the appointment of commissioners to exercise the inferior civil authority of the Court of Queen's Bench by the Ordinance of February 6, 1841.<sup>22</sup> From 1841 to 1843, the Special Council abolished the inferior terms of the courts of Queen's Bench, replacing them with District and Division courts. The Judicature Act of 1843 restored this civil inferior jurisdiction to the courts of Queen's Bench, while increasing the monetary ceiling separating the inferior and superior terms from 10 to 20 pounds sterling. The same statute changed the name of the Court of King's Bench to the Court of Queen's Bench, to mark the beginning, a few years earlier, of Queen Victoria's reign. In civil matters, litigants could appeal from judgments of the court in suits involving amounts of more than 20 pounds sterling. In criminal matters, they could appeal to the king or queen in council for fines in excess of 100 pounds sterling imposed for certain types of offences (misdemeanours).

### *Scope and contents of the fonds*

The documents of the Court of King's Bench for the district of Montréal offer information on myriad subjects, from specific events to the quantitative analysis of social, economic and political phenomena, as well as being an essential source for studies on the administration of civil and criminal justice. Sitting in Montréal, the court produced records testifying not only to the

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22. 4 Vict., c. 26 (1841).

evolution of this city and the surrounding area, but also to that of communities in the Eastern Townships (until 1830), the Montérégie region, the Laurentians, the Lanaudière region and the Ottawa valley.

The fonds concerns trials of all kinds, both civil and criminal. This court was probably the tribunal with the largest range of authority in the history of the judiciary in Québec during the British Regime. The records of this court reflect the influence of the strong British and American immigration of the first decades of the nineteenth century and of the demographic growth in the most fertile agricultural region of the province. The emergence of financial institutions and the beginning of industrialization left their traces there. Criminality and changes in social regulation also make their appearance in these records. The fonds includes the following jurisdictions: “general criminal matters,” “inferior civil matters,” “superior civil matters,” “ratification of titles,” “bankruptcy,” “sheriff,” “choice of address for service” and “poll books.”

### 2.1.1.2 The Fonds of the Circuit Court, 1850-1953 (TP10)

#### *Administrative history of the fonds*

The Circuit Court was created in 1849 by virtue of the Act relating to civil trial courts.<sup>23</sup> It was the successor of the courts of Queen’s Bench in inferior terms, as well as of the circuit courts established in 1843.<sup>24</sup> It was distinguished from its predecessors by the fact that its authority applied across the entire province of Lower-Canada. The first widely decentralized tribunal of province-wide jurisdiction, the Circuit Court sat in 33 places from its inception. The number of court houses would increase, especially during the 1850s and 1860s, and sporadically from then on until 1942. Initially, each court house served a circuit, as defined in the original statute or in the proclamations establishing new circuits. At the time of the great decentralization of judicial districts in 1858, the government began to change the appellation of the circuits to better reflect the new judicial territorial divisions. The Circuit Court sat, initially, for each district, in the chief place; then, for the counties, in a town or village in the county. The name “Circuit Court for the circuit of” disappears and gives way to that of “Circuit Court for the District of” and “Circuit Court in and for the county of.” In 1893, a separate Circuit Court was established for Montréal, which became a local tribunal instead of a part of the province-wide court.<sup>25</sup>

The authority originally conferred upon the Circuit Court in 1849 extended to all civil matters for which the sum demanded did not exceed 50 pounds. Moreover, the judges of the Circuit Court exercised the same powers as those of the Superior Court with regard to probate, to guardianship and trusteeship, to closures of inventory, registration of deeds, and other non contentious matters needing speedy settlement. Also, from 1857 on, it was the judges of the Superior Court who sat in the Circuit Court. The latter court shared with the Superior Court the right to regulate and supervise Commissioners’ Courts and justices of the peace. When the Code of civil procedure of Québec was put into effect in 1866, the monetary ceiling of the Circuit Court’s jurisdiction was raised to \$200. Suits involving less than \$100 were heard in a summary fashion, without the right to appeal, and those involving sums between \$100 and \$200 could be appealed to the Superior Court. In 1889, “appealable” cases heard in chief-places were transferred to the Superior Courts.

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23. 12 Vict., c. 38 (1849).

24. 7 Vict., c. 16 et c. 17 (1843).

25. The Circuit Court for the District of Montréal (local tribunal) thus replaces the Montréal registry of the province-wide Circuit Court. See 56 Vict., c. 24 (1893).

In 1922, “non appealable” cases were transferred to the Magistrate’s courts established in all the same places as the Circuit Court and from this time onwards, the latter court only sat for “appealable” suits in courthouses outside of the chief-places. In 1946, the authority over cases involving sums from \$100 to \$200 was also transferred to the Magistrate’s Courts. Without being officially abolished, the Circuit Court became obsolete. The official abolition of this court took place in 1953, by virtue of the law modifying the Code of Civil Procedure.<sup>26</sup>

During the first 72 years of its existence, while the Circuit Court was the principal trial court for inferior civil matters, it thus formed a very important cog in the administration of justice in the province. Sitting in many more localities than the Superior Court, it dealt with debt recovery for modest amounts throughout the province and allowed litigants to settle urgent non contentious matters without having to travel to the chief-place of their district. For suits involving sums over \$100, litigants could appeal decisions made by the Circuit Court to the Superior Court.

### *Scope and contents of the fonds*

The records produced by the Circuit Court offer information on a wide range of subjects, from the history of specific events to the quantitative analyses of political and socio-economic trends, aside from constituting an essential source for studies of the administration of justice. This fonds is all the richer for covering the period of intense industrialization and urbanization that Québec underwent from 1850 to 1920.

Much more decentralized in its activities than the Superior Court, the Circuit Court produced records not only in the chief-places of the districts, but also in many small towns and villages, thus reflecting the development of urban life and the relations between urban agglomerations of all sizes with their hinterland. These records concern civil suits involving modest sums (less than \$200). The majority of these cases deal with the recovery of debts, although other types of suits can be found in lesser quantity, for example, cases about damages, litigation on municipal taxes, and, until 1919, cases dealing with naturalization and citizenship. Ultimately, this fonds constitutes a very rich source for the study of the evolution of the living standards of the majority of the population, as related to the changing economic context.

The first series of this fonds encompasses the court registries where the Circuit Court sat during its existence. For BAnQ Vieux-Montréal (formerly the Montréal Archives Centre), these registries were to be found in the following places: Montréal, Saint-Jean, Joliette, Sorel, Saint-Hyacinthe, Sainte-Scholastique, Valleyfield, Saint-Jérôme, Beauharnois, Châteauguay, Huntingdon, Marieville, Sainte-Martine, Iberville, Napierville, L’Assomption, Sainte-Julienne, Coteau-Landing, Vaudreuil, Berthier, Saint-Ours, Saint-Liboire, Lachute, Saint-Benoît, Terrebonne and Acton Vale.<sup>27</sup>

## **2.1.2 Court registries or *greffes* (series)**

The court registry represents the place where a court of province-wide jurisdiction sat and where its court clerks produced, received and preserved the records resulting from judicial activities.

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26. 1-2 Eliz. II, c. 18 (1953).

27. The order of presentation of these registries reflects the *Liste uniforme des numéros des greffes des tribunaux judiciaires de juridiction provinciale conservés à BAnQ* (see section 2.1.2), which initially follows chronological order and then the arbitrary order in which records coming from specific registries were discovered during processing.

The registry is to court records what the parish represents for civil status records prior to 1926: a fundamental, essential key to research. Indeed, it is impossible to find any record produced prior to the mid 1980s without knowing not only which court produced it, but also in which registry it was kept.<sup>28</sup> In terms of its classification scheme, BAnQ has established a uniform list of numbers of registries. Until the middle of the nineteenth century, the registries were located in the chief-places of the judicial districts. However, the effort to make justice more accessible with regard to more modest matters lead to the multiplication of court houses and registries outside of the chief-places. The open list of registry numbers in the classification scheme now contains more than 140 places where the various courts of the province have sat. The description of a court registry indicates to the researcher the tribunal's date of establishment in each locality, while the scope and content notes sketch out the limits of the territory from which litigants came to each court house. This last element is vital for research, as it enables the researcher to determine whether the records generated by a particular case can be found within a specific registry. The boundaries of the territories attached to the registries change over time and can thus have a major impact on locating court records. For example, litigants from Sainte-Thérèse are now heard in the court house at Saint-Jérôme, but the courts for this area formerly sat Sainte-Scholastique as long as this town was the chief-place of the district of Terrebonne. However, before the creation of this district in 1858, such litigants had to go to Montréal.

The scope and content of a registry also enumerates the jurisdictions produced by the tribunal in that locality. The various courts do not necessarily produce the same range of jurisdictions in every court house where they sit. Moreover, note that court clerks exercised a great deal of autonomy in the way their registries operated until the Quiet Revolution, when the first centralized court services made their appearance, in the wake of the creation of the Department of Justice in 1965. Thus no one should be surprised to find that the records of a given court may vary considerably from one registry to another in the way they are organized, at the discretion of each court clerk's preferences. The scope and content at levels of description lower than the registry often mention details of these variations. An example of descriptions at the series (registry or greffe) level follows.

### 2.1.2.1 The Sainte-Scholastique registry (Circuit Court), 1858-1933 (TP10, S22)

#### *Administrative history of the registry*

The court house at Sainte-Scholastique is not one of the 33 court houses specified in the *Act respecting the civil trial courts* establishing the Circuit Court in 1849.<sup>29</sup> However, a circuit court for the circuit of Deux-Montagnes at Saint-Benoît exists from 1850 to 1859. When the district of Terrebonne is created in 1858, this former court is replaced by the Circuit Court of the District of Terrebonne at Sainte-Scholastique, which became the chief-place for the district. The new judicial district of Terrebonne includes at that time the counties of Deux-Montagnes, Argenteuil and Terrebonne. Registries were installed at Lachute for the county of Argenteuil and at Saint-Jérôme for the county of Terrebonne.

The Circuit Court continues to sit at Sainte-Scholastique for the entire district up until 1924, when Saint-Jérôme becomes the chief-place of the district. From the month of May in 1924, the Circuit

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28. Searching for a case without knowing which registry it was kept in only becomes possible when all the registries are integrated into the electronic docket book. Although launched in 1975 in Montréal, the electronic docket book only includes the majority of registries towards the end of the 1980s.

29. 12 Vict., c. 38 (1849).

court sitting at Sainte-Scholastique serves the county of Deux-Montagnes instead. However, most of its activities will be assumed by the Magistrate's Court for the District of Terrebonne in 1922 and by the Magistrate's Court for the County of Deux-Montagnes in 1924.

### *Scope and content of the registry*

This series includes all the records produced by the Circuit Court at the Sainte-Scholastique court house. It supplies researchers with a great variety of information on the economic, social and political history of the lower Laurentians, a region in the northern part of the Montréal lowlands, at the end of the nineteenth and the beginning of the twentieth centuries.

The records of this registry reflect the prevalence of agriculture in the Montréal lowlands, as well as the gradual colonisation of the Laurentians. They illustrate the evolution of the standard of living of the local population, the nature and extent of the networks of credit and indebtedness as well as relations between tenants and landlords.

The Sainte-Scholastique registry of the Circuit Court kept records in the following jurisdictions: “general civil matters,” “appealable cases,” “non appealable cases” and “judicial administration.”

## **2.1.3 Jurisdictions (sub-series)**

A “jurisdiction,” in the hierarchy of the court record classification scheme, simply indicates a separate documentary group, assembled because court officers felt the need at a given time to distinguish it from other groups, for administrative reasons that are more or less obvious from a modern perspective. Initially, court clerks did not produce any distinct documentary groups. During the French Regime, there was almost no organization of records by category of litigation: records of all kinds of cases were interspersed, mostly in chronological order. Note however that records of litigation, in contrast to non contentious matters, were grouped separately right from the beginnings of the colony. The courts played a paramount role in the preservation of records produced not only by the magistracy, but also by other state officials—documents that the government felt to be essential to society and entrusted to the court registries. Among these records, civil status documents, notarial deeds, surveyors' records and guardianship and trusteeship records come immediately to mind.

In 1979, the ANQ assigned the records produced by the judiciary to two classes in their classification scheme. The first one, class “C,” contains most of what are known as the “civil” or non contentious records.<sup>30</sup> In fact, these records encompass documents that confirm citizens' civil status, serve as a proof of “authentic” transactions (in the sense of European civil law systems) or testify to judicial authorizations accorded to individuals for a variety of reasons. The second one, class “T,” includes principally the records of suits opposing two or more litigants.<sup>31</sup> Bear in mind that these classes were developed at a time when the ANQ had practically no records produced by the courts except for the so-called “civil” records and therefore did not entirely understand the hierarchical structure of the documentary groupings produced by the courts. Our current understanding, after thirty years of experience with court records, combined with the decision to adhere to RAD, could have lead to a reform of these two classes. In fact, all the divisions of

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30. This class consists mainly of civil status records, notarial and surveyors' archives, guardianship and trusteeship records, probate records, civil marriage records and a few other kinds of records.

31. In criminal suits today, the Crown is always the prosecutor, but formerly, it was the victim that had to prosecute.

class “C” are jurisdictions of the Superior Court and its ancestors and should more logically be integrated into the fonds of these courts. However, such a radical change would have had a negative effect on the deeply rooted habits of researchers and on the numerous publications—scholarly and other—that have cited the records in class “C” as sources. As result, it was decided to keep these classes while indicating in the descriptions the links between the records designated as “civil” and the courts that produced or preserved them.

Finally, note that the groups of documents concerning various non contentious matters that do not belong to the formerly established series of “C” class have been integrated into the classification scheme of class “T” court records in the “non contentious” jurisdiction. Thus a researcher who wants to consult so-called “civil” records, but who does not find them within the divisions of class “C” at a specific registry, should check to see if there is a non contentious jurisdiction among the records of the courts that sat there.<sup>32</sup>

To return to the question of jurisdictions in general, let us specify that usually these categories assemble records produced during the application of a specific element of judicial authority (for example, bankruptcy proceedings). They can be produced by court officials other than the judges and court clerks of the regular courts, and then entrusted to the court clerks in order to ensure their preservation and public accessibility (think, in particular, aside from the case of “civil” records, of coroners’ inquests).<sup>33</sup> They can also reflect the volume or importance of a category of suits, or simply an administrative method (for example, family law or choice of address for service of process).

As previously mentioned, it is during the British Regime that the courts first begin to organize their records into distinct divisions according to their powers, notably with the separation of civil and criminal cases, and then with the distinction between cases of an “inferior” or “superior” nature (to take into account the severity of the offences or the amount of money at stake). Sometimes the division of powers is between different courts. In these cases, there was no need to specify the jurisdiction, as it corresponded to the powers of the tribunal. Therefore, if a court only has power over either superior or inferior civil matters,<sup>34</sup> the records will be classified as “general civil matters,” whereas records will be classified as “superior civil matters” or “inferior civil matters” only when the court producing them has authority over both kinds of cases.<sup>35</sup>

Thus, right from the beginning of the British Regime, there is a proliferation of jurisdictions that gradually increases throughout the nineteenth century and accelerates in the twentieth century, especially since the 1970s. Thus one can see a certain number of jurisdictions, both criminal and civil, appearing (and sometimes disappearing), including, among others, “coroners’ inquests,” “circuits,” “ratification of titles,” “bankruptcy,” “contested elections,” “ex parte,” “review,” “expulsion,” “public assistance,” “voluntary deposits,” “firm names,” “expropriation,” “citizenship,” “small claims,” “statutory offences” and “divorce.”

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32. One sometimes finds non contentious matters like probate records or cases of guardianship or trusteeship mixed with a variety of special procedures in a jurisdiction called *ex parte*, from the latin “without litigants,” in some registries of the Superior Court and its ancestors. These special procedures often involve a request for the authorization of a specific action by the court, or else the registration of a right, by a single petitioner.

33. This explains why coroners’ inquests are not found within a single fonds. Statute law and legal tradition required coroners to deposit their reports with the clerks of the peace, who worked for different courts, depending on the era.

34. This is the case with the Superior Court (TP11) and the Provincial Court (TP13), for example.

35. This is the case for the courts of King’s Bench (1792-1849), who sat alternately in superior and inferior terms and produced distinct documentary groups corresponding to these two jurisdictions (for example, TL19, S3 et S4).

The appearance of various jurisdictions has a two-fold effect on research. On the one hand, it forces researchers to determine which jurisdiction might include the information they wish to obtain. As they must be able to find the appropriate tribunal and the registry, they must also look at the precise jurisdiction, if they wish to locate a specific document. On the other hand, the jurisdictions do offer a grouping by subject that can simplify some thematic research. As we shall see in detail later, the finding aids produced by the court clerks are almost always nominative and rarely provide access by subject. One of the few methods of easily carrying out a thematic search in court records is to direct research from the start to a subject that corresponds to an existing jurisdiction, like bankruptcy or expropriation. Even in such cases, the researcher needs to understand that a given jurisdiction may not always exist for the targeted period. Nonetheless, it is generally only possible to have rapid access to a group of records concerning the same type of suit by using existing jurisdictions.

How can one determine, in a practical way, whether a documentary grouping is a jurisdiction or simply a different kind of record? Generally speaking, whenever the court clerks used a distinct numbering system for cases, usually recorded in a register functioning as a docket book, there is a jurisdiction. This criteria is very useful in cases where a court produced several series of registers. Take for example the registers on seizures by garnishment or on oppositions of the District of Montréal Circuit Court. These registers use the same case numbers as the docket books. They could be considered as sub-categories of the docket books, that carry on the work of the general docket books for suits in which there is seizure by garnishment or opposition by a third party. These registers are thus kinds of records within the same jurisdiction (general civil matters) and do not indicate the existence of a distinct jurisdiction. In contrast, the registers on evictions (expulsions) produced by the same court assemble and number, separately from the general docket books, all cases concerning the eviction of tenants. The case files, kept separately, carry the same numbers. There is no overlapping between the cases in these registers and the regular docket books, where no cases in eviction can be found. The only logical conclusion is that the court clerks created a separate jurisdiction for evictions.

Sometimes, a separate numbering system exists without there being any corresponding docket book or similar register, either because the registers did not survive, or because the court clerk at that time did not feel that it was necessary, given the lesser nature or infrequent occurrence of the activity producing the records in question. Sometimes a court clerk even assembled documents in a separate group but without numbering them. Two examples illustrate this situation: 1) the files where the district magistrates made decisions on indigents by virtue of the Act on public assistance generally exist without registers and are not filed in numerical order, but rather chronologically. Moreover, the numbers found on these files were not assigned by the court clerks but rather by the social services who attributed a number to each indigent. However, this documentary group clearly results from the exercise of a distinct judicial power, creating a separate category of files, bearing no relationship to any other jurisdictions (not registered in the docket books or other registers in the registry); 2) in certain smaller registries, especially during the years when the region in which they are located was less populated, non contentious matters (special petitions of all kinds) are often not indicated in any of the court's registers. Sometimes these files are numbered separately from those in the general civil jurisdiction; sometimes they are not even numbered, but simply filed in chronological order.

For the purposes of its classification scheme, BAnQ established a uniform list of numbers of jurisdictions. This open list contains at present over 60 jurisdictions, to which others will

doubtless be added, as the court services create new ones or when archivists find new ones as they process older judicial fonds.

Once the classification scheme has been applied to a given judicial fonds, PISTARD allows the researcher to see easily which jurisdictions exist for that fonds, by looking at the structure of the whole fonds. A rapid glance at the descriptions of these jurisdictions will help him or her to understand the nature of the jurisdiction and to note what kinds of records can be found there as well as their chronological limits. The following example demonstrates the nature of such descriptions.

### **2.1.3.1 Coroners' inquests (Montréal registry, Court of the Sessions of the Peace) 1908-1986 (TP12, S2, SS26)**

#### *Administrative history of the jurisdiction*

The role of the coroner as an officer of justice has roots in the English judicial system. As is the case with justices of the peace and sheriffs, the institution of coroner was transferred as is to Québec with the Royal Proclamation of 1763, without any local ordinance specifying their duties or powers. It is only in the middle of the nineteenth century that any legislative provisions appear to clarify somewhat the work of coroners. Essentially, the coroner intervenes when unusual deaths occur. He must decide whether there is any reason to suspect that the deceased died because of violence or unjust means or in circumstances that require investigation. If he finds it necessary, he holds a public inquest and produces a report which specifies the cause of death. If necessary, he indicates the person or persons who he believes to be criminally responsible for the death. Thus, the report of the inquest sometimes leads to charges before the criminal assizes. The coroner was often a doctor who exercised judicial authority during his inquests. These inquiries take place in what was known at the time as the "Coroner's Court."

At the beginning of the twentieth century, the provincial government passed its first specific law on coroners.<sup>36</sup> Shortly afterwards, a statutory clause specifies for the first time that coroner's reports must be deposited at the registry of the peace in the district for which the coroner was appointed. Thus we consider the records of the coroners for the district of Montréal as a jurisdiction of the Court of the Sessions of the Peace for that district.

In 1986, the *Act respecting the determination of the causes and circumstances of death* radically changed the role of the coroner by eliminating his duty with regards to determining criminal responsibility for a death. This rupture with the criminal justice system also ended the link with the clerks of the peace. The records produced from 1986 on are kept by the Office of the Coroner and will eventually be transferred by that agency as government documents rather than court records.

#### *Scope and contents of coroners' inquests*

This sub-series provides an exceptional source for the study of suspect deaths in the district and city of Montréal. It is also indispensable for the analysis of the role of coroners, the evolution of their methods and their relationship with the criminal justice system.

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36. 4 Geo. V, c. 38 (1914).



The documents produced in this jurisdiction include case files, docket books, indexes and administrative records.

### 2.1.4 Types of records (sub-sub-series)

The last level of description in BAnQ's classification scheme for court records deals with types of records. These are documentary groups that fill specific functions and therefore have typical contents and usually a characteristic method of organization or presentation. Among the most common types of court records to be found are case files, docket books, judgment books and indexes. In the classification scheme's hierarchy, these groupings are at the sub-series level for most tribunals with local jurisdiction (TL) and at the sub-sub-series level for courts with province-wide authority (TP). In certain circumstances, the kinds of records may have internal subdivisions. For example, judgment books can be general, or qualified as "out of term," or "contested" and "non contested," or "interlocutory" or "on inquiry and merits." In such circumstances, BAnQ distinguishes these sub-categories only in the descriptions of the contents of the material containers, which the researcher can find in PISTARD by clicking on the "Localisation" button.<sup>37</sup>

There is no administrative history for descriptions of types of records. The scope and content notes, in contrast, are very important at this level, as they explain not only the nature of the type of document and the information one can typically find in it, but they also indicate variations in the way the records were organized over time. It is within the types of records that the impact of court clerks' autonomy can be most clearly seen, especially in the numerous "home-made" filing systems that complicate document retrieval. According to the state of processing of the court records in a given fonds, archivists use the scope and content notes to point out any gaps in the records or any special features in the filing methods used.

The ANQ established a uniform list of the numbers of the types of documents for their classification scheme. This open list contains at present around 60 types of records, to which others will doubtless be added as the Court Services create them and as archivists discover them while processing older fonds. The following example illustrates the usefulness of the information available in the scope and content notes at the type of document level.

#### 2.1.4.1 Judgment lists (Superior civil matters, Montréal Registry, Circuit Court) 1855-1871 (TP10, S2, SS4, SSS6)

##### *Scope and contents of judgment lists*

This sub-sub-series constitutes an extremely useful finding aid, not only for case files but also for judgment books, whenever the researcher does not know either the case number or the date of judgment. These lists are organized by the first letter of the family names of the plaintiffs, these names generally being entered in chronological order within each alphabetical division.

These lists indicate the names of the plaintiffs and the defendants and also provide details concerning the procedures (date of pleading, date of deliberation, etc.), the monetary category of

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37. According to standard number 150 of the former ANQ's *Normes et procédures* (Standards and procedures), the archivist should avoid creating a plethora of series and subseries in pursuit of precision. Moreover, PISTARD does not allow for more than four levels, other than those of files or for individual documents. There would therefore be a risk of confusion if several subdivisions of judgments were entered at the same level.

the case (from \$100 to \$120 or from \$120 to \$200), the nature of the judgment and the name of the judge or the court clerk who rendered it. Some systematic irregularities appear in the indexation. Thus, court clerks usually entered companies under the letter “C,” banks under the letter “B” and insurance companies under the letter “A” (for *assurances*), whatever the first letter of the name of the firm actually was.

## 2.2 How a trial unfolds and court records are produced

To find your way through the labyrinth of court records, you need to understand at least a few fundamental elements of court procedure and how court registries operate. We cannot deal here with every aspect of procedure that might eventually be relevant for every inquiry.<sup>38</sup> We shall instead sketch out, in a general way, the normal procedural path of litigation and the activities of court officials in order to facilitate document retrieval in the majority of cases. The differences in procedure require separate descriptions for civil and criminal court records.

### 2.2.1 Civil trials

In civil suits, the judiciary intervenes at the demand of litigants who were not able to settle their differences amicably or by unofficial arbitration. The individual who feels injured makes a declaration about the nature of the conflict and the rights which he believes that the State should recognize and protect, and then petitions the court to force his adversary to appear before the tribunal so that justice may be done. (These rights can arise from various legislative sources, such as the Civil Code, the Charter of Rights and Freedoms or any number of particular laws or regulations.) Here are the principal actors (the plaintiff, the court and the defendant) and the first stage in the procedure: the filing at the registry of a declaration and of a fiat (Latin term meaning “that he should act,” describing the petition addressed to the tribunal to summon the defendant to present himself). The clerk assigns a number to the case and enters it into one or more registers, including the docket book, and then issues a writ of summons addressed to the defendant, which a bailiff must then serve on the said defendant.<sup>39</sup>

The returning of this writ (or bref, in the former legal jargon), duly dated and signed by the bailiff when served, constitutes the second stage of the procedure. Note that the bailiff does not always succeed in finding the defendant and serving the summons. The other less frequent but nonetheless regular way of beginning a civil suit is with a petition. Indeed, petitions form the first step in special procedures or non contentious acts detailed in the fifth and sixth books of the Code of Civil Procedure. Generally, they are used in cases where an individual needs the court’s authorization or a court order requiring another party to behave in a certain way or carry out a specified action (for example, injunctions, writs of habeas corpus in civil matters, rectification of civil status registers, petitions for separation from bed and board, etc.). Most of these petitions are addressed to the Superior Court.

Often the trial will stop either with the issuing of the writ of summons, or with its return to the registry. Indeed, many cases are never officially ended, often because the simple threat of being summoned to appear before the court is sufficient to push the defendant to reach an out-of-court

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38. For complex cases, recourse must be had to the Québec Code of Civil Procedure or to the codes of criminal or penal procedure.

39. In the docket book or *plumitif*, this stage can be detected by the term “writ issued” or *bref émis*.

agreement with the plaintiff. Other suits end somewhere in the middle of a trial, when an out-of-court settlement is still possible, when the plaintiffs give up the suit or sometimes even because one of the litigants dies and his or her heirs decide to stop proceedings. The docket book is particularly valuable precisely because it allows the researcher to see how far the suit progressed.

There may be a considerable number and variety of procedures and people who would like to get a better idea of them can revel in skimming through Québec's Code of Civil Procedure. In general, the procedures in a simple trial include one or more appearances of the litigants, a few depositions of pleas, and some written exhibits, then the judgment. More complex trials can include several judgments (interlocutory judgments) before the final judgment and may go on for several years before the court. Civil cases also very often include post judgment procedures, in execution of judgment, among others in the case of seizure and judicial sales. All these procedural steps are normally entered into the docket book. In a certain number of cases, court services personnel must receive sums of money and redistribute them to creditors. Thus the registries produce various accounting records to enter the reception and the payment of sums from different sources, ranging from judicial sales to voluntary deposits.

Finally, a suit may be sent to another court, either by appeal to a higher tribunal in the appeals hierarchy, or by transfer, if the initial registration was made in an inappropriate court.<sup>40</sup> In cases that are sent to an intermediate level of appeals, the clerks of the superior courts sometimes keep the case numbers issued by the trial court instead of assigning new case numbers. This is particularly obvious in the case of the Review Court, where three judges of the Superior Court sat in review of decisions rendered by a single judge of the same court, from 1864 to 1920. Moreover, the files were returned to the original registries after review, the procedure of review being simply added to the files at the trial court level. Thus the review jurisdiction produced docket books and judgment books but no separate case files.

In contrast, in the case of the Québec Court of Appeals and its ancestors, every trial is entered under a new number in the docket book. The court clerks throughout the province temporarily transfer the trial court's case file to the registry of the Court of appeals, in order to prepare the "joint file," in other words, a printed copy of the contents of the trial court's file plus the transcript of testimony, which is supplied to all the judges and parties at the appeal level. The original is then returned to the registry of the trial court. It is these original files, containing the transcripts, which are designated as "Sent to appeals" (*Portés en appel*) in BANQ's classification scheme for the period after January 1, 1920. These files have been selected for permanent conservation, prior to sampling, because of the transcripts of testimony (see section 5). Sometimes, the files "sent to appeals" contain the case numbers of both courts and contain a few copies of procedural documents, including the judgment, from the Court of Appeals. They remain nonetheless files of the trial courts. The file of the Court of Appeals, on the other hand, never carries the case number of the original trial court. It generally contains only procedural documents submitted at the appeals' level, the "joint file" being often kept only for the duration of the appeal and not being deposited in the case file.

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40. Appeals are sometimes forbidden, as in the case of summary justice, but sometimes it is possible to climb the entire ladder of appeals up to the Supreme Court of Canada or to the Judicial Committee of the Privy Council in London, prior to 1949. As for transfers, they follow petitions for writs of *certiorari* to the appropriate court.

## 2.2.2 Criminal and penal trials

Nowadays, in criminal and penal trials the State intervenes to protect society by punishing crimes and offenses against the laws and regulations of all levels of government (federal, provincial and municipal).<sup>41</sup> It was not always so, as the English judicial system relied on the initiative of the victims in prosecution for a long time, up until the reform of the criminal justice system towards the middle of the nineteenth century. In Québec and in Canada, however, Crown prosecutors rapidly exercised a monopoly on criminal prosecution right from the end of the eighteenth century. There were, and still are, two main ways to begin such pursuits, according to the severity of the offense.

Most criminal and penal trials deal with minor offenses (misdemeanours) and begin with the laying of an information (*dénonciation et plainte*) by a police officer, made before a justice of the peace or another magistrate having the authority of one or more j.p.s. The justice of the peace issues a summons or an arrest warrant, depending on circumstances, and a police officer serves this warrant on the accused. Then, the latter must appear before the criminal or penal court specified in the warrant; he may plead guilty and be sentenced on the spot, or else plead not guilty and undergo a trial. Summary convictions are heard before a magistrate without jury.<sup>42</sup> A trial normally involves one or several appearances, hearing witnesses, the deposition of exhibits and pleas. It ends with the sentence. All these procedures are visible in the case file, via the minutes of the hearings, and in the docket book, where the dates and brief descriptions of procedures are entered.<sup>43</sup> If the accused is not acquitted, the sentence usually imposes a fine or a period of imprisonment, although the judge can also order, among other measures, specific treatments (such as rehabilitation (for drugs or alcohol) or therapy), a period of probation or the accomplishment of community work. Case files will contain certain documents concerning the execution of sentences, such as proofs of payment of fines or modifications in probation orders, but the details on imprisonment will instead be found in the records of various agencies of the Department of Public Security. The latter files are confidential, by virtue of the *Act respecting Access to documents held by public bodies and the Protection of personal information*.

Initially, trials involving more serious crimes also begin with an information laid before a justice of the peace who issues a summons or an arrest warrant. However, in the case of certain crimes specified in the Criminal Code, the law requires instead an indictment, written by a crown prosecutor.

Until the beginning of the twentieth century, indictments led to hearings before a grand jury, an ancient English legal institution that still functions in some Canadian provinces and American states. The grand jury is made up of about twenty people chosen at random from lists of eligible citizens drawn up by the sheriff of the judicial district. They must listen to the indictments, to witnesses and to proof supplied by the prosecutor, as well as the accused's version of events, before deciding whether there is sufficient reason to hold a trial. Formerly, in England, anyone could have someone arrested and accuse him of a crime. During the centuries when victims had

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41. The term "criminal" is often used to designate both criminal and penal trials; however, to be more precise, we use the term "criminal" for offenses described in the Criminal Code and "penal" for violations of all other legislation or regulation.

42. These cases are heard before what was until 1988 the Court of the Sessions of the Peace and is nowadays the Québec Court, Criminal and Penal Division, or else before municipal courts.

43. Note that the docket books of summary or inferior criminal courts were not always kept in a complete and conscientious manner and that they sometimes seem closer to account books, indicating the dates of payment and amounts of fees and fines rather than the dates of procedures as such.

to sue criminals, the grand jury existed to ensure that accusations were well-founded and to discourage an arbitrary and punitive use of the judiciary for personal ends. At the end of the hearings, the members of the grand jury have to determine whether they believe each indictment well-founded (a true bill) or reject it (no bill). In the first instance, the trial then begins before the superior criminal court. The decisions of grand juries are generally found in the minute books of the Court of Queen's Bench and of its ancestors (see the appendices).

In Québec, as in most Canadian provinces, the government abandoned the grand jury and replaced it with preliminary inquiries during the first decades of the twentieth century. It was the judges of the inferior criminal courts that conducted the preliminary inquiries, hearing the indictments, the witnesses, the proof presented by the prosecutors and the declarations of the accused in order to decide whether there was enough proof to justify a trial. If there is, the course of the trial depends on the nature of the crime and sometimes on the choice of the accused, or rather, his lawyer.

Some crimes where procedures must begin with indictments can only be tried before a judge and jury, others are required to go before a magistrate alone and in yet other kinds of offences the accused can choose whether to be heard before a judge alone or before a judge and jury.<sup>44</sup> Moreover, the accused may make this choice at several times during the course of the trial and may even change his mind later on.

This complex situation is reflected in the files and registers of the criminal courts and complicates research, at least up until the second half of the twentieth century, when the criminal court registries begin to open a single case file, regardless of which court hears the case. Previously, the two levels of criminal trial courts were served by two distinct court clerks: the clerk of the peace, who dealt with trials without juries, and the clerk of the Crown, who was assigned to the criminal assizes or to trials by jury. Each clerk kept his own separate register and numbered the cases heard before his court in its own distinct sequence. The transfer of a case from one court to the other therefore required the transfer of the case file or the opening of a new file and the entry of the transfer in the list of procedures in the docket books or the minute books of each respective court. Some court clerks kept the case files separate, others physically transferred the contents of the files, while leaving an empty file folder containing only a notice of the transfer, while others combined the two files while keeping only the case number of the first or of the second court, or sometimes keeping both numbers. In the registry of the district of Montréal, there are even three distinct series of docket books: that of the registry of the peace (*greffe de la paix*), which includes the entries of informations for all trials, the cases where the accused pleads guilty and the preliminary inquiries; that of the Court of the Sessions of the Peace, which contains the trials heard before a magistrate alone; and, finally, that of the criminal assizes (Court of King's Bench and then Superior Court), which covers trials by jury. The researcher who wishes to trace a criminal case must remain vigilant and be conscious of the fact that the trial in question may have made its way from one court to the other and even return to the original court, if the accused changed his mind. Thus, one should always begin by verifying the registers and files of the lower trial court, where each criminal trial begins, even if the offense in question normally is heard before the criminal assizes.

Let us make one last remark on how trials proceed, both in criminal and civil matters, with regard to the language of court records. Since the beginning of the British Regime, French and English

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44. See appendix 4 for examples of the various options.

documents lie side-by-side in the files and registers produced by the courts. In civil cases, hearings are held in the language of the defendant. Nonetheless, the parties can file exhibits and pleas in both languages. Moreover, there were often two clerks at the beginning of the British Regime (one French-speaking and one English-speaking) and various warrants and procedural acts as well as entries in the registers reflect the language of the court clerk as much as that of the litigants. In criminal cases, English law, tightly bound to procedural formalities, did not even allow certain important procedural documents, like indictments, to be written in any language other than English. The role of precedents in the common law, making the sources of criminal law less accessible to French-Canadian lawyers, also contributed to ensuring the dominance of the English language in criminal procedure, at least up until the enactment of the Criminal Code of Canada in 1892. This had inevitable consequences: the researcher who is not bilingual will face great difficulties in the systematic consultation of the court records produced since 1763. A solid understanding of the records therefore depends not only on a certain knowledge of legal terms, but also on a familiarity with these terms and their abbreviations (of which court clerks were extremely fond in the past) in both languages (as well as some Latin).<sup>45</sup>

## 2.3 Major types of documents, their structure and their limits

Among the sixty-odd types of records described in BAnQ's classification scheme some are almost omnipresent and essential to an understanding of the potential of court records and the difficulties that may be encountered by researchers. These document types are case files, docket books, judgment books, minute books and their diverse indexes. A brief description of these kinds of documents, their contents, the way they are usually organized and their limits will provide some solid landmarks for most research in the labyrinth of court records. As for the other types of documents, the researcher can find a goodly part of the pertinent information in the scope and content notes in PISTARD.

### 2.3.1 Case files

This type of document constitutes the richest yet most unequal source among court records. Both for specific research as for quantitative or serial studies, case files provide details that are often very precious and cannot be found in the other types of documents. A case file contains all the documents filed by the lawyers of all litigants and third parties as well as the records produced by judges and court officers such as bailiffs, court clerks and the sheriff.

The contents of files vary enormously, and they can be very thin or extremely voluminous. Sometimes, a file only contains the summons and the declaration or petition of the plaintiff. In other files, it seems as if the entire Criminal Code or the Code of Civil Procedure has accumulated: minutes of service, informations, appearances, declarations, out-of-court interrogatories, affidavits, defences, responses, contestations, motions and notices of all kinds, judgments, bills of cost, procedures of execution, exhibits of all kinds, and so on.

While the procedural documents provide information that is mostly technical, exhibits as well as declarations, replies, or other pleadings can supply precious information about the origins of the case, and on the family or professional affairs of the litigants and their social and economic

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45. It is for this reason that we have provided English and French equivalents for some of the basic legal terms in the glossary to be found at the end of this guide.

networks. Note however that transcripts of testimony are normally only found in the case file when the case has been appealed, contrary to what the public generally believes. Most files therefore do not contain transcripts of testimony.

Moreover, the researcher can never be sure beforehand if the file that interests him will be a treasure trove or almost empty. More than one researcher has been disappointed, after thinking that he might find the key to a family mystery. This happens particularly when nothing is entered into the docket book after the first entry of “Fiat, writ issued” (*fiat, bref émis*). Very often in the past, the physical case file was only opened when the writ, or summons, had been served and the bailiff’s copy returned to the registry. If the litigants settled out of court prior to service of the summons, if the bailiff could not find the defendant, or if the plaintiff died and his heirs stopped the proceedings, there may be no trace of a file at all.

To find a specific case file, the researcher who does not know the case number must consult the indexes produced by the pertinent registry. The case files being organized by the year of opening and not that of judgment, it is sometimes necessary to consult the docket book (a book of entry for procedures) in order to find the year when the trial began.

### 2.3.2 Docket books

The docket book or *plumitif* records the skeleton of the progression of acts of procedure. Each trial begun can be found there, whether or not a judgment was rendered. It therefore shows the number of the case, the names of the litigants, the dates of the stages of procedure that have been reached, the judgment or judgments (if there are any) and any post-judgment procedures, such as seizures and executions. Often it mentions the nature of the case, or, at least, the amount of money at stake. If necessary, the docket book refers to the transfer of the case to another court, by evocation or on appeal.

Docket books are at the same time records containing unique information and finding aids that can help locate case files or judgments. With its index, the docket book is extremely important whenever the researcher needs information on a specific trial but does not have all the data needed to find the case file. Moreover, the docket book allows the researcher to follow the progress of the trial, whether it stops at the first stage of procedures, goes on to judgment or ends at a later stage. Docket books can be used to find a specific case file and to check its situation, or to select the files of a certain category of cases or even to collect quantitative data on the operation of the administration of justice.

Formerly, most court clerks usually organized the entries in the docket books in consecutive numerical order of cases; however, some court clerks at times chose instead a chronological order by date of return of summons. Today, all the entries concerning a given trial are united in the same place, regardless of how long it may take, under the first entry made in the year in which the trial began. Formerly, some court clerks entered each stage of proceedings in the year in which they occurred, reusing the old case numbers as required.

The information provided in docket books from inferior courts often appears quite perfunctory and sometimes frankly incomplete, in comparison with the docket books of the superior courts. In criminal cases, sentences are never separately recorded in a register, but simply entered in a summary manner in the docket book. Sometimes, the entry in the docket book is the sole

remaining trace of a trial, as several registries did not open a physical file prior to the return of the summons.

Using docket books for research requires an understanding not only of their normal operation, but also of the possibility of variations in their structure and content from one registry to the other and over time. In the case of a systematic or thematic study, the docket book can sometimes offer a good starting point. In criminal matters, for example, the docket book indicates the nature of the offence in a very brief form, such as “breaking and entering” or “C.cr. n° 296.”<sup>46</sup> It also mentions the sentence, although in an equally summary manner. It may also be used to select specific kinds of cases for quantitative analysis and to supply precise chronological boundaries.

However, the ability to use docket books in this way often depends on the vagaries of former court clerks’ methods and cannot be taken for granted by the researcher. The systematic addition or omission of certain details can make all the difference. Only the examination of the reality of records in the region under study will permit the researcher to determine how useful the docket books could be for a given research project. Remember that court clerks were very independent before their status was changed from that of officers of justice remunerated by fees to that of salaried civil servants during the 1960s. Their home-made methods of record management have left their imprints on the records. For example, normally all procedural steps in a trial are entered under the original entry. At the end of the nineteenth century and up until 1926, however, the clerks at Montréal entered the continuation of a trial under the original case number, but in the docket book of the year in which the new procedure took place. As a result, on the one hand, you need to check the docket books of several years to be sure that you have found all the entries for a trial, and on the other hand, you will find entries dealing with various cases from previous years beneath a single case number. Let the researcher beware!

Moreover, docket books are notably absent prior to the twentieth century in most registries for the lowest level of criminal trials, that is, the Sessions of the peace. In their place, there are occasionally minute books, more or less detailed according to the whim of the court clerk. Sometimes, for reasons of economy, the court clerk will use a single volume as docket book and index for more than one jurisdiction or more than one court at the same time. Sometimes, there is no register, only case files.

### 2.3.3 Judgment books

This type of document exists only in civil cases, as criminal sentences are simply indicated summarily in the docket books. These registers include the originals of judgments in civil cases rendered before the court for a given jurisdiction and thus allow the identification of all the cases ending in a judgment. In trials dealing with more modest amounts, the judgment was often entered on a printed form with the details filled in by hand. A judgment may take several pages, in complex cases. Nowadays, judgments summarize the essential facts and arguments of the litigants, the reasoning of the judges and their final decision. In the past, the written judgment was often limited to the operative provisions, that is to say, the decision without mention of the reasoning behind it. Nonetheless, the ordinary man, unfamiliar with the maze of legal procedures, can often understand a case better by reading the judgment than by looking through the procedural documents to be found in the case file.

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46. C. cr. is an abbreviation for *Code criminel* or “Criminal Code.”



Thus, the judgment books provide an essential source for research for both legal and historical ends. On the one hand, they offer the possibility of analyzing jurisprudence for periods before the regular publication of judicial reviews. On the other hand, they contain precious details for qualitative and quantitative research of all kinds.

Judgment books are generally organized in chronological order by the date at which each judgment is rendered. However, this chronological order is often very approximate and reflects both the degree of assiduity with which the judges send their judgments to the clerks, and the greater or lesser alacrity of the clerks to enter them or insert them into the books.

To find a specific case in the judgment books, one must know the exact date of the judgment and use the index of judgments which indicates the page and, if necessary, the volume of the register in which the desired case can be found. If the date of judgment is uncertain, the researcher must turn to the docket book to ascertain it. If the court clerk did not produce an index, it can be difficult to consult a specific judgment, given the lack of precision in the chronological order mentioned above.

### **2.3.4 Minute books**

Minute books, like docket books, are simultaneously records containing unique information and finding aids that can help locate case files. They allow the researcher to follow the progress of trials over time, whether they stop at the initial stages of procedure or reach judgment or end at some later stage. They can be used to locate a specific case file and verify its situation, to select files within a certain category of cases or to collect quantitative data on the operation of the administration of justice.

Minute books record the details of hearings and of all the cases heard, including the date of the hearing, the name of the judge or judges, the case numbers (if they exist), the names of litigants and their lawyers, the stages that procedures have reached, the witnesses heard, the exhibits filed with the court and sometimes the nature of the trials. It is the only kind of document produced by the registries that allows one to see how hearings unfold. The books are organized in chronological order by hearing and usually have indexes. Minute books sometimes replace both judgment books and docket books. The researcher will find them most often in the records of the oldest courts (during the French Regime and the beginning of the British Regime) and also in the registries of the criminal assizes (the superior criminal courts). They can be distinguished from docket book by their chronological order by hearing. This means that they are more difficult to consult, as the information on a given trial is scattered throughout the sequence of hearings. Whenever the court clerk did not produce an index, the researcher must leaf through all the pages to try to find a specific trial and retrace its path.

## **Research Among Court Records**

## 3.1 Serial and individual research

Court records offer a mine of information not only for researchers who concentrate on specific events and individuals, but also for those who wish to analyse the evolution of a socioeconomic or legal phenomenon. The two approaches explained below, however, describe very different situations.

### 3.1.1 Serial research

The researcher who wishes to follow the evolution of a phenomenon over time by systematically using an entire series of court records can be faced with specific difficulties, depending on his work methods. When he casts his net widely, for example, by examining the complete production of a court in a given jurisdiction and registry for a period of time, the main problem is usually the mass of records to be consulted. The sheer quantity of documents can easily discourage most researchers, except for the most courageous, in court houses serving well populated regions. A research project extending over a period from 10 to 50 years may be possible in a smaller registry or during a remote period, when the quantity of records to examine does not require superhuman efforts. However, the more the researcher advances in time and the more he aims at an important urban centre, the less possible an exhaustive serial study becomes. For example, for the Montréal registry, major jurisdictions, such as general civil matters, are too vast for exhaustive systematic serial research even in the middle of the nineteenth century.<sup>47</sup> A less voluminous jurisdiction, like bankruptcy, still produced several hundred files annually right from the first decade of its existence (from 1840 to 1849) at the Montréal registry. An exhaustive study of these files would in fact require several years of work in the context of a masters or doctorate, for example. It is therefore necessary to be realistic in the definition of research projects. The researcher must choose a smaller jurisdiction or registry or else base his analysis on a selection or sampling of available cases.

In contrast, if the researcher wishes to examine only certain kinds of cases and undertake a thematic serial study, he must be prepared to devote considerable time to identifying these cases. Do not forget that there is usually no subject index to trials. If the subject of research is not, by a happy coincidence, a jurisdiction in and of itself, one must begin research by combing through the available registers to obtain indications of the subject. Only a few extremely rare indexes provide the slightest trace concerning the subject of trials. On the other hand, in criminal courts, docket books are usually useful in this endeavour, as court clerks usually indicated the nature of the offence. In civil cases, any indication of the subject of the trial is much less likely. Sometimes, docket books contain indications, especially for less common cases, like legal separations. Often, however, there is only mention of the amount of money at stake. In these cases, the researcher can leaf through the judgment books, page by page, or plunge directly into the case files, depending on the nature of the data that he is looking for. If the study requires the analysis of judicial decisions, the researcher would best begin with the judgment books. If he wants to consult all the cases of a specific kind, whether they ended in a decision or not, he has no option but the arduous task of combing through the files one by one.

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47. For example, in Montréal, the Superior Court heard 2,750 cases in general civil matters in 1850, more than 6,000 in 1900 and even more in 1963 (32,000).

### 3.1.2 Individual research

Most researchers today however hope to find documents within the courts' records that concern individuals or specific events, for purposes that vary from biography and genealogy to political or legal history. This type of research normally experiences few difficulties in court records prior to 1920, provided that the researcher knows that a trial actually took place and that he has certain minimal data on the trial, which will be discussed in section 3.3. However, whoever plunges into research without having solid reasons to believe that a trial involving such and such a person was held around such and such a year may spend a long time searching in vain. Certain categories of individuals are effectively often involved in trials (merchants, for example, or professionals, for the recovery of debts or fees from their clients). In contrast, the vast majority of individuals appear rarely or never before the judiciary. It is better to begin research with clues found elsewhere, in private records, notarial deeds, contemporary periodicals or reviews of jurisprudence, than to plunge blindly into court records on the off chance that a trial might have taken place.

The finding aids produced by court clerks are produced exactly for the purpose of locating specific trials. However, sometimes these finding aids do not exist, either because the court clerk in the given region or at that specific time period did not find it necessary to create an index, a list or a docket book for a certain group of records. This is particularly true of the criminal records prior to the twentieth century. Coroners' files also suffer from the frequent absence of indexes, even in the twentieth century, in the smaller registries. Sometimes a court clerk neglected to produce indexes, like indexes to judgments, which are usually available elsewhere in the province. In these cases, research becomes an arduous process of combing through case files or the pages of various registers. BAnQ hopes gradually to fill up these gaps, but since the preparation of indexes is a time-consuming task requiring considerable human resources, the results will necessarily be slow.

From 1920 on, the problems related to research on specific trials meet additional difficulties. The sampling of case files (explained further on in section 5) deprives researchers of case files for the majority of trials, leaving only the information available in the docket books and judgment books. Individual research is thus much more rewarding for the period from 1642 to 1919.

## 3.2 Finding aids produced by court clerks, their logic and their limits

Officers of justice have been required for a very long time to produce indexes with a view to locating records of trials for judicial purposes. In this guide, we will not go into the details of all the elements that may vary among court finding aids,<sup>48</sup> but we will cover in a general way the nature and the limits of the indexes as such. Obviously, these tools are produced for the administrative needs of court clerks and according to a logic determined by the trial process and existing technology. The electronic docket book well-known today, which unites information on all the trials held before the courts of the whole province in a single data base, only appeared in 1975, and most registries were only integrated into it during the 1980s. Previously, there was no centralization and each registry was like an autonomous fief, with its own customs and traditions.

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48. As we mentioned in section 2.3, docket books and even minute books and judgment books may be considered as finding aids, aside from the fact that they are documents recording specific information. In the present section, however, we use the expression "finding aid" as a synonym of "index."

Let us also point out that indexes were conceived in terms of the needs of the judicial system and not those of future research. There are no subject indexes. However, the nominative indexes indicate the case number (key element for identifying and locating the case file) and often the pertinent page number of another register (for example, the judgment book). At the moment of their creation, they were constituted in an approximate alphabetical order according to the names of the litigants. Generally, all the entries beginning with the same letter of the alphabet are found together, but they are entered in chronological order. This flows naturally from two factors: first of all, from the constant updating carried out by court clerks, in response to the daily needs of the registry; secondly, from the documentary form of the bound volume. Consequently, the modern researcher must consult all the entries under a letter to verify whether the name of the desired plaintiff can be found there.

Initially, during the nineteenth century and earlier, indexes were only produced according to the names of plaintiffs, then, at a later time, generally in the twentieth century, according to the names of both litigants. It is easy to imagine the difficulties that this can cause if the researcher only knows the name of the defendant! Moreover, in the nineteenth century, court clerks often indicated only the last names. This poses obvious problems for researchers, who must then go all the way to the judgment or the case file to be sure of the identity of the litigant.

Over the years certain registries produced some finding aids covering long periods of time or cumulating cases heard before several courts. For example, a card catalogue in three chronological segments was produced for the Superior Court and its predecessors for the district of Québec, for the three following periods: from 1765 to 1808, from 1794 to 1900 and from 1900 to 1973.<sup>49</sup> Obviously, this card catalogue makes it much easier for researchers who know the names of litigants but are not sure of a precise date. Unfortunately, it seems that most of the other registries did not take such an initiative before the mid twentieth century and often do not even have a repertory, like the Montréal registry, for shorter periods, that is to say about ten years per volume. While a sad reality for researchers, this situation reflects the modest needs of the judiciary, which rarely needs to find an older case file or judgment. Besides, court clerks formerly did not always rigorously apply a single indexation method. This can be seen particularly in cases where the plaintiff is a corporation. Municipalities are sometimes indexed in various ways: under “V” for ville, under “C” for city or under the first letter of their name (“M” for Montréal). Some court clerks adopted short cuts, such as the habit of entering all companies under “C” or all banks under “B,” whatever the first letter of their firm name really was. The researcher must thus use his imagination and explore all possible paths when using court indexes.

### 3.3 Tracking down information<sup>50</sup>

The information needed to find a court record rapidly depends in part on the type of document being sought. However, it is preferable to have the following information: the place where a trial is held, the name of the court or at least the nature of the case, the date (at least approximately) and the names of the litigants. Moreover, the case number is extremely useful; let us review the importance of each of these pieces of information.

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49. The first two segments of this catalogue are available on microfiche in all the archives facilities of BAnQ and the last segment, in the form of rolls of microfilm, is only available at BAnQ Québec.

50. A schematic representation of section 3 can be found in appendix 5.

### 3.3.1 The place

Even to determine to which archives facility one must turn, one needs to know the judicial district, or better yet, the court house where the trial was held. If the researcher has no idea, he should be warned that his task will be arduous. He may well begin with the districts of Montréal or Québec, because of the concentration of population and business in these places, but it would be a difficult endeavour, without guarantees for success. Note that in general a criminal trial is held either in the locality where the offense was alleged to have been committed, or in the place where the accused was found, arrested or imprisoned. Civil cases are generally heard before the court near the defendant's domicile. There are however exceptions.<sup>51</sup>

### 3.3.2 The name of the court or the nature of the case

Let us not forget that the fonds is the gateway to court records and that the name of the court is essential for finding the appropriate fonds. If the researcher does not know the name of the court, he must at least have an approximate idea of what kind of case he is looking for, as the nature of a case is a primary clue to determining what court heard it, and, if necessary, in which jurisdiction the documents were filed. During the French Regime, the problem does not arise, since all suits were heard before the royal courts, without regard to their nature. During the British Regime, however, courts with limited powers appeared. By using the tables on the evolution of the judiciary in the appendices of this guide, the researcher who is unfamiliar with the names of the courts can nonetheless determine before which court a particular kind of case should have been heard in a particular time period.

In a general way, if the sought after case is criminal, the document can be found in the fonds of the Court of the Sessions of the Peace (currently the Court of Québec, Criminal and Penal Division) or of its ancestors. Certain crimes specified in the Criminal Code must however be heard before the criminal division of the Superior Court, or its ancestors. Some minor misdemeanors can also be found before the municipal courts.<sup>52</sup> In the case of minors, criminal cases appear in the records of the Youth Court and its ancestors, from the creation of the Court of Juvenile Delinquents in and for the City of Montréal in 1912.

Is the concern about a civil suit involving a large sum, a modest one or a frankly petty one? Depending on the era, it will be heard either before the Superior Court and its ancestors, or the Court of Québec, Civil Division, and its ancestors, or before the Small Claims Division or a similar ancient tribunal. Moreover, some kinds of cases, by their very nature, are automatically heard before a superior court. Think, among others, of family matters: for example, divorce or legal separations as well as those questions relating to alimentary pensions or the custody of children which often accompany them. Some particular kinds of cases are subject to the authority of special courts (for example, the Expropriation Tribunal) or constitute separate "jurisdictions" within the records of a given court (for example, bankruptcy cases).

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51. See the Criminal Code and the Code of Civil Procedure for details of these exceptions.

52. See appendices 1 and 3 of this guide.

### **3.3.3 The date**

Dates play a role of primary importance in the search for a particular court record, because of the generalized absence of finding aids covering long periods of time. A judgment is normally found in the judgment book of the year in which it was pronounced. However, case files are usually filed by the year of their initial date, that is, the year in which the trial began. If the researcher has no exact date at hand, he is condemned to comb systematically through the indexes before and after the approximate date. If he knows the date when the trial began, but not when judgment was rendered, he can use the docket book to find the date of judgment. In the opposite case, the date of judgment can serve to circumscribe the limits of the search, for the researcher can move back from that date in the docket books until he finds the year in which the case began. If the docket books contain the continuations of former cases, as we mentioned earlier is possible, he must find the entry which begins with the issuing of the summons or the reception of a petition, in some cases. Note that certain cases can stretch out over long periods, especially in the superior courts. The researcher must thus be patient and be prepared to contemplate combing through at least a dozen years, when he has only an imprecise date, or even longer, in very complex or controversial trials.

### **3.3.4 The names of the litigants**

The names of the litigants (and especially the name of the plaintiff) are essential in finding court records, because of the nature of the indexes. It is preferable to know the names of both litigants, in order to distinguish between cases where plaintiffs have the same last name. However, the name of the plaintiff is more important, as most indexes did not offer access by the name of the defendant until well into the twentieth century. Even if the researcher knows the number of the case he is looking for, the names may be important to be sure of having the right trial, as in some periods the court clerks used the same number two or more times during the same year.

### **3.3.5 The case number**

The case number is mostly necessary for locating case files, although it can be tremendously useful in using docket books and it can be used to verify, along with the litigants' names, whether one has found the right document. Case files are very rarely filed in a non numerical order, thus the case number is an important datum for locating a file. Most files are organized in ascending numerical order, or in various groupings by number. In many registries, the clerks formerly grouped files for a range of years by binding in a bundle all the number ones from 1897 to 1907, then all the number twos for the same years in another bundle, and so on. Sometimes the groupings are less simple. For example, in Montréal for about twenty years, the files of the Superior Court were organized according to the last four numerals in the case numbers, up to 4,999; when the last four numerals exceeded 5,000, the clerks subtracted 5,000 to determine in which bundle the file would be placed. Thus, No. 2,174, No. 22,174, No. 32,174, No. 44,174 are found alongside No. 7,174, No. 27,174, No. 37,174 and so on. Obviously, the researcher cannot find a file in such circumstances unless he knows the file number. Normally, a researcher can detect a file number with the help of the indexes, although he might sometimes find it indirectly through another source, notably by way of a reference to the case mentioned in a notarial deed, a review of jurisprudence or a private record.

### 3.4 Other finding aids

Until the recent past, few finding aids other than court clerks' indexes were produced for court records, given the huge quantities of documents involved and thus the cost in human resources needed to supply more precise access, by subject, for example. With regard to the future, initially BAnQ will doubtless settle for ensuring the preservation of existing finding aids and making them more available, either by microfilming or digitizing them. At the same time, BAnQ will attempt to fill in the most serious gaps in the finding aids transferred to it by the courts, for example, the lack of nominative indexes in certain jurisdictions and certain registries.<sup>53</sup> Producing more effective finding aids will thus be the concern of partners for many years to come. In this perspective, several extremely useful finding aids have been created in the last few years or are currently in production. Here are a few examples.

The Société Archiv-Histo, encouraged by the experience acquired in the creation of the PARCHEMIN data base<sup>54</sup> with notarial deeds, has produced several very useful computerized finding aids concerning certain court records. The data bases Themis I, II and III, available as CD-ROMs, offer researchers sophisticated access to their contents, enabling searching by date, case number, object of the trial, names, professions and domicile of the litigants (and their spouses, if mentioned), as well as an indication of the existence of a judgment and its date or the cessation of the trial, if known. All this information comes from reading the documents filed by the litigants and not the various registers produced by the concerned courts. This method has the advantage of ensuring that the file involved exists at BAnQ; on the other hand, it does not mention cases where the file has been lost or destroyed in the past, during a fire or other event. The researcher must therefore be conscious of this limitation and consider the possibility of pursuing the search in the court's registers, if Themis does not provide the expected results. Let us mention also that the later versions of Themis contain hundreds of digital images as examples of documents found in the files.

The Themis I data base holds information coming from the files of the Court of King's Bench, in the superior civil jurisdiction, for the District of Montréal, from 1791 to 1827. As for Themis II, it contains information drawn from the files of the Court of the General and Quarter Sessions of the Peace for the District of Québec from 1800 to 1945. The latter data base was produced in segments because of its volume. Finally, Themis III regroups information coming from the files of the Court of Common Pleas for the District of Montréal, from 1763 to 1791.<sup>55</sup>

Alongside the Themis series of data bases, Archiv-Histo produced CDs under the name "Chronica" which also concern court records. In this finding aid they reproduce digital images of the collection of judgments and deliberations of the Sovereign Council (1663-1716), the index of judgments of the Superior Council (1717-1760), the inventory of insinuations of the Sovereign Council and the Prévôté de Québec as well as an inventory of notarial and court documents, all based on old publications by Pierre-Georges Roy.

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53. Note that, in some archives facilities, transfer slips are used as primitive finding aids to make court records more accessible, pending processing and the complete application of the classification scheme and descriptions in PISTARD.

54. See Hélène LAFORTUNE, Normand ROBERT et Serge GOUDREAU, *Parchemin s'explique*, Montréal, Ministère des Affaires culturelles, Chambre des notaires du Québec, Archiv-Histo, 1989, 284 p.

55. According to the classification scheme of BAnQ, there are actually three distinct courts involved, with slightly different powers, under codes TP5, TL16 and TL275, but all named Court of Common Pleas.



Other collaborators have also produced finding aids for the fonds and collections at BAnQ. The most important of these tools dealing with a judicial fonds is the computerized index and analytic inventory of the Juridiction Royale de Montréal (1693-1759) produced by Joseph F. Holzl. With its roots in his research on the history of his wife's family, Mr. Holzl's inventory offers a host of information for researchers hoping to learn more about litigation in the era of New France and the region of Montréal. Each fiche of his inventory indicates the case by a sequential number, specifies the number of documents and pages, the names and professions of the people mentioned and in what capacity they were acting (defendant, surety, guardian, and so on), the geographic locality, as well as a list of exhibits, the date of creation and a brief description of the contents. Mr. Holzl began his work in 1995 and by 2000, he had completed his inventory, printed in nine volumes. Each volume has an onomastic index. Moreover, the author checked all the names he listed in existing genealogical dictionaries<sup>56</sup> in order to standardize the spelling and to indicate which were individuals as yet unknown in other available sources. This remarkable finding aid was then made available on a CD, and from 2005 to 2007 the electronic version was used by BAnQ's employees and student interns as the basis for descriptions at the file level in PISTARD. Thanks to Mr. Holzl's work, BAnQ was thus able to describe all the files of the Juridiction Royale de Montréal in its online catalogue.

Similar work was carried out, often on the basis of Pierre-Georges Roy's earlier transcriptions, for court records and guardianship records for the district of Québec City. As a result, most of the court records of New France have now been described either at the file or the document level in PISTARD and can be searched online. The guardianship records for the District of Montréal have also been available in PISTARD at this level since 2011. As part of an ongoing international project initially conceived for the 400th anniversary of Champlain's arrival in 1608, the documents have also been digitized and attached to their descriptions, providing an incredibly rich and easily exploited source for the history of New France.

Note that all these finding aids deal mainly with the records produced by courts which existed prior to 1850. This is the natural result of the increase in the mass of court records produced since that period, a growth which becomes spectacular in the twentieth century. It is quite probable that in the future, new finding aids will also be limited to the French Regime or the beginning of the British Regime or else they will concentrate on less densely populated regions than Québec City and Montréal,<sup>57</sup> simply because of the mass of records involved.

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56. Indeed, this researcher initially consulted René Jetté, *Dictionnaire généalogique des familles du Québec des origines à 1730*, Montréal, Les Presses de l'Université de Montréal, 1996, then, Cyprien Tanguay, *Dictionnaire généalogique des familles canadiennes depuis la fondation de la colonie jusqu'à nos jours*, Montréal, Éditions Élysée, 1975, 7 vol., le *Dictionnaire biographique du Canada*, Québec, Les Presses de l'Université Laval, c1966, 14 vol., and finally l'Université de Montréal, Programme de recherche en démographie historique, Hubert Charbonneau et Jacques Légaré (dir.), *Répertoire des actes de baptêmes, mariages, sépultures et des recensements du Québec ancien*, Montréal, Presses de l'Université de Montréal, 1980.

57. In this vein, note the excellent cooperation between the Société généalogique de l'est du Québec and BAnQ Rimouski, who have produced an onomastic index of litigants heard before the Circuit Court of Rimouski from 1845 to 1953, available on microfilm.

# 4 **Restrictions on Access**

One of the principal advantages to research among court records is the fact that very few restrictions on access apply to them. This broad accessibility flows from the principle of public court hearings, guarantor of the independence of the judiciary. It is thus a principle of a constitutional nature, an integral mechanism in maintaining the balance between the executive, the legislature and the judiciary in a parliamentary democracy. Only a few exceptions exist at this time: documents concerning adoption, some records devoted to minors, documents subject to judicial orders (in camera hearings and orders of non-publication) as well as pardons, and some acquittals and absolutions. Note that most of these restrictions only touch relatively recent records and that none of them concern documents produced prior to 1925. Let us examine each kind of restriction to circumscribe clearly their nature and limits.

## 4.1 Adoptions

Since 1960, the files and registers concerning adoptions have been confidential by legislative prohibition.<sup>58</sup> Nowadays, only a judge of the Court of Québec, Youth Division (formerly the Youth Court), can authorize the consultation of these documents either for pedagogical or research purposes, or for public inquiries, with the assurance that the anonymity of both the adopters and adopted will be respected. If the lack of information could cause serious harm to the adopted person or someone close to him or her, a judge may authorize full or limited access. The Department of Justice considers the confidentiality of the files and registers relating to adoption so important that these series must remain in the court houses longer than any other court record; the retention schedule provides for their transfer to BAnQ 100 years after the year of their creation. As a result, no adoption case files have yet been transferred to BAnQ and the first ones should arrive there no sooner than 2025 or 2026.<sup>59</sup> They will however still be confidential at that time, as current legislation does not provide for an end to the confidentiality of these records. However, certain registers, notably indexes and docket books, that have already been transferred to BAnQ contain references to adoptions. Indeed, in the past, certain court clerks entered information on adoptions in registers covering jurisdictions with no restrictions on access, like general civil matters. In these cases, BAnQ normally either microfilms or digitizes the register, omitting the entries on adoptions. Then the original is closed to consultation and researchers must use the copy. Those who are looking for information on adoptions must thus turn to the judges of the Court of Québec, Youth Division, as the records on adoptions can only be found in the registries of this court and can never be consulted without the permission of a magistrate.

## 4.2 Records concerning minors

Restrictions on access to court records concerning minors are very recent and do not in general apply retroactively to documents produced before the passing of the modern statutes that impose confidentiality. In effect, concern about the confidentiality of personal information is a 20th century phenomenon. It can first be seen in the initial Juvenile Delinquency Act of 1908,<sup>60</sup> which authorized the establishment of courts specifically for minors. Although the federal government did not make the case files of Youth Courts inaccessible, it did impose a restriction

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58. See 8-9 Eliz. II, c. 10, par. 6 (1959-1960), which modified the Act on adoptions by making case files confidential et by imposing penalties on those who give access to unauthorized individuals. Today confidentiality flows from article 582 of the Civil Code of Québec.

59. In Québec, the first Act concerning adoptions was sanctioned in 1924. However, it was modified the following year and it seems that few if any adoptions in virtue of this act took place prior to 1926.

60. *Juvenile Delinquency Act*, Statutes of Canada, 1908, chapter 40.

on publication so that while the files are available for consultation, no one is supposed to publish anything based on their research in these records that would allow the public to identify the children involved. The Act modifying the act on adoption of 1959-1960 is the first law that made files completely confidential, unless a judge authorizes access. Afterwards, one must wait until 1979, for the clauses on confidentiality in the Juvenile Delinquents Act and the Youth Protection Act, with regard to cases in the jurisdictions of statutory offences and youth protection. In 1984, legislative modifications added or removed certain clauses concerning access for the jurisdictions of delinquency and statutory offences. Most recently, the Youth Criminal Justice Act passed in 2002 added a disposition retroactively restricting access to delinquency case files produced from 1970 on.

Moreover, the Youth Protection Act of 1979 requires the courts to destroy the youth protection files produced since January 15, 1979, when the concerned minor reaches his or her majority. The obligation to destroy files also touches the statutory offences jurisdiction for files produced between January 15, 1979 and April 2, 1984.

In practical terms, this means that the only confidential files concerning children transferred to BAnQ are those from the delinquency jurisdiction. The delinquency documents produced before January 1, 1970 are open to consultation, but are subject to a restriction on publication, while those that date from January 1, 1970 to the present can only be consulted with the permission of a judge. The files and registers of the statutory offences jurisdiction are accessible, but are also covered by the restriction on publication, from the creation of this jurisdiction in 1977 until January 14, 1979 and from April 3, 1984 to the present. Between those two dates, the documents were destroyed in the court houses and no documents exist to transfer to BAnQ. Youth protection files existed prior to the passing of the Youth Protection Act in 1979, and those older files are accessible, but covered by a restriction on publication.

It must be noted, however, that records of litigation in other jurisdictions which may concern children (like separation and divorce, for example) are entirely accessible, unless the presiding judge issued a court order of non-publication for a specific trial or hearing.

### **4.3 Court orders: in camera hearings and non-publication**

In spite of the general accessibility guaranteed by the principle of the public nature of trials, judges have the power to limit access to a case file. Two types of court orders may currently touch case files: orders of non-publication and orders for in camera hearings. The non-publication order does not prevent the public from consulting the files, but prohibits publication of its contents. In camera orders, as their name indicates, prevent the public from attending hearings. The judge uses this order to make sure that a person is able to testify serenely, by eliminating the stress caused by a public hearing, in particularly delicate circumstances. By extension, Court Services forbid access to the audio recordings or transcriptions of testimony added to files in cases subject to in camera orders. However, the rest of the file is considered to be public.<sup>61</sup>

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61. It is pertinent to note that neither academic doctrine, nor legislation, nor jurisprudence provide any support for this extension of the meaning of in camera orders, nor do they indorse the opposite position. There is, therefore, a current legal vacuum surrounding the notion of in camera orders after the end of the hearing. The current restrictions flow from administrative decisions that are rooted in the contemporary trend of protection of personal information and not in legal or judicial directives.

Once again, the exercise of this authority is relatively recent and remains rare, except in a few more sensitive jurisdictions, such as divorce and family matters. When transferring court records to BAnQ, the Court Services are supposed to indicate on the transfer slips when a specific case file is subject to a court order of non-publication or for an in camera hearing. In the first of these cases, the researcher may consult the file but must avoid publishing the information he finds in it; in the second case, the personnel of the consultation room must first verify whether there are any transcriptions of testimony in the file, then remove them before supplying the rest of the file to the researcher. To remove these restrictions, the researcher may address a request to the coordinating judge for the judicial district where the court order was issued.

## **4.4 Pardons, acquittals and absolutions**

In criminal court records, the main restriction on access flows from the Criminal Records Act and from certain administrative decisions concerning people who have been acquitted or absolved.

### **4.4.1 Pardons**

The Criminal Records Act, which legally applies only to federal institutions (federal courts and the Royal Canadian Mounted Police), has always been voluntarily applied by provincial administrations of justice as an administrative decision. The spirit of this law requires the keepers of court records to pretend that no file ever existed when a person has received a pardon.

Normal procedure begins with the National Parole Board in Ottawa, which, after having studied a request for rehabilitation and having decided to grant a pardon to an individual, asks the clerk in charge of the criminal registry where the individual was condemned to withdraw the file and expunge every trace of its existence, that is to say, eliminate all the information on the trial or trials involved in the various court registers (docket book, role, etc.). In the case of court records already transferred to BAnQ, when the court clerks receive a notification that a pardon has been granted by the National Parole Board, they ask BAnQ to return the case file or files to them so that they can be kept with the other files withdrawn for the same reason. BAnQ must also expunge the relevant information in the registers that it keeps.

The incidence on research is obvious. Not only are some case files and the related information in court registers missing, but the archivists can not even inform the researchers of the reason for the gaps in information. Sometimes an entire register must be temporarily closed to consultation because the entries concerning pardoned individuals have not yet been eliminated. In these cases, BAnQ tries to process the register in question as rapidly as possible in order to make an expurgated version accessible.

With regards to eventual future accessibility, Court Services are still considering the problem of the ultimate destiny of the files withdrawn for pardons. However, while waiting until these files are integrated into the retention schedule of the courts, it is difficult to predict when these restrictions might eventually be lifted (for example, after 100 or 150 years).

### 4.4.2 Acquittals and absolutions

In the wake of the adoption of the Charter of Human Rights and Freedoms, effects similar to those involving pardons are emerging in the case of people who have been acquitted or absolved. A judgment of the Supreme Court of Canada in 1982 (the McIntyre decision) suggests that an acquitted person must have the same right to have the traces of his passage before the courts expunged as the condemned person granted a pardon. Until a few years ago, the Court Services had not yet taken any general action in this direction. Seeking a just equilibrium between the principle of public hearings, the right of the public to information and freedom of the press on one hand, and the protection of citizens from abusive use of judicial information on the other hand, the Department of Justice produced directives for the Court Services restricting access to certain information concerning the files of acquitted or absolved individuals. This restriction is only valid for information in the electronic docket book.

From April 1st, 1998 on, people acquitted or absolved of a criminal accusation may ask the court clerks to have the information on them in the electronic docket book made confidential. The other records concerning the trial are not affected by this measure, neither the case files, nor the older paper format docket books. The procedure is voluntary and not universal and therefore will only affect a fraction of the cases where the accused are acquitted or absolved. Remember that the electronic docket book only exists from 1975 on and that it did not include all the registries before 1986. BAnQ and the MJQ have not yet decided on a how to transfer the electronic docket book. Currently, BAnQ can access the electronic docket book via a programme offered by the Société québécoise d'information juridique (SOQUIJ), and thus has no role to play in applying the measures concerning acquittals and absolutions. Note that it would doubtless be possible for serious researchers to request access to such files from the Commission d'accès à l'information du Québec.

# 5

## **The Impact of Retention Schedules on Court Records**

Court records were almost inaccessible for many years, piled up in ever increasing quantities in the basements and unused corners of court houses, lugged from one temporary storehouse to another, in conditions that were often deplorable. The production of case files in particular increased during the 20th century in an almost exponential way. Then during the 1970s, a space crisis in court houses and regional intermediate records centres encourage the transfer of inactive court records (often up to the 1950s) to the regional centres of the ANQ. The Montréal Archives Centre was an exception to this rule. In Montréal, the volume of court records accumulated over more than 300 years was so great that the complete transfer could not be carried out.

The mass of records in Montréal, their continued frenzied growth and the legal obligations imposed on the courts by the Archives Act of 1983 were at the roots of the creation of an interministerial committee on court records in 1987. Its report, submitted in 1989, led to the elaboration and approval of retention schedules for the judicial courts, with a view to improving the future management of these records. It also included recommendations with regards to the fate of the accumulated archives. It would take too long to recount here in detail the proceedings of the committee and its recommendations. Those who are interested can write to BAnQ Vieux-Montréal to obtain a copy of the report. Let us however summarize the overall approach advocated by this report, in terms of its impact on potential research.

The committee recommended an operational method with several components:

- 1) The integral preservation:
  - a) of docket books, judgment books and indexes (the courts' memory);
  - b) of the case files of trials that were appealed to the Court of Appeals;
  - c) of all record series produced before 1848;
  - d) of all case files produced before 1920.
- 2) The sampling of case files produced from 1920 on (according to a rigorous statistical method which will guarantee a rate of confidence of 95 per cent).

Note that these recommendations were approved by the Department of Justice and the then Department of Cultural Affairs as well as by the chief justices of the courts involved. A mixed committee (Court Services and ANQ) proceeded to plan and implement the recommendations. Currently, most of the backlog of archives has been processed and all of the court records produced before the mid 1960s have already been transferred to BAnQ's regional archives facilities. It took almost fifteen years for the entire backlog of court records, especially those in the Montréal court house, to be processed and transferred. Presently, most court houses apply the retention schedules annually and BAnQ's regional facilities receive the yearly transfers and make them available for research.

The consequences for research are multiple. On the one hand, the application of the retention schedules ensures the public easy access to the courts' documentary heritage and allows the intellectual and physical processing of these rich and complex fonds. On the other hand, sampling imposes limits on research concerning specific trials from 1920 on.

The transfer of almost all the judicial fonds to BAnQ will henceforth allow its archivists to better understand the complex reality of these fonds. It was also at the roots of the elaboration of a coherent classification scheme, creating order among the numerous record series produced by the courts and thereby facilitating the work of reference archivists. Finally, it has encouraged a better



understanding of the nature of the various kinds of records and an appreciation of the regional variations in the practice of court registries. This new knowledge has been provided to the public by way of the descriptions of judicial fonds in PISTARD. Indeed, the present guide would have been inconceivable without the efforts devoted to processing, research and description during the last two decades.

The sampling of case files from 1920 on does however deprive researchers of some information on a goodly number of trials. However, the integral preservation of docket books and judgment books ensures the conservation of certain minimal information on all the cases heard before the courts, whether the trials reached the stage of judgment or ceased almost immediately after the issuing of the summons. Note that sampling is not carried out if docket books or judgment books are missing. If, in many cases, the files scarcely offer more information than that which can be found in the registers, in some cases, there is no doubt that much information has been lost. This is particularly true in the case of criminal trial records, since there is no judgment book in criminal jurisdictions, the sentence being simply entered in a summary fashion in the docket book. Nonetheless, this loss was considered acceptable, given the excessive cost involved in the integral preservation of all the case files<sup>62</sup> or in their qualitative selection. The researcher must also be aware that any choice of qualitative criteria by BAnQ would have been subjective and would not have guaranteed the preservation of the individual file that interests him or her.

Finally, the samples of case files preserved from 1920 on will be sufficient for a sound understanding of the nature and evolution of the courts' work and will be able to provide a source for all kinds of serial research. On the other hand, the researcher who needs a specific file (that was not sent to the Court of Appeals) will most likely have to settle for the information contained in the docket book or the judgment book, or available in external sources such as newspapers and legal texts.

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62. Before making its recommendations, the Interministerial Committee on Court Records made considerable efforts to determine the cost associated not only with the preservation of all the documents in their original format but also with the options of microreproduction, either by microfilming or by scanning.

# Conclusion

The universe of court records, so complex at first glance, is becoming more and more exploitable in the light of knowledge acquired at BAnQ over the last twenty years. A better understanding of the evolution of the judiciary allows researchers to identify with greater precision the fonds that may be of most interest to them. Furthermore, a survey of the classification scheme for judicial tribunals casts light upon the structure and nature of the records that they have produced. This can help researchers to find details on the documents they are looking for more rapidly among the descriptions contained in the PISTARD data base. In turn, the explanation of the connections between the way trials proceed and the documents they produce throws light on certain difficulties in locating records. Moreover, a description of the nature and limits of the finding aids produced by court registries illustrates the information needed beforehand in order to find the traces of a specific trial. Finally, the clarification of restrictions on the consultation of court records reveals how, nonetheless, they are generally wide open to the public.

By assembling all these elements of information in the present guide, BAnQ hopes to encourage more researchers to mine the depths of these very rich archives, that include almost the whole existence of Québec society, from the French Regime up to the present. Over the last few years, professional and amateur researchers have already begun to exploit court records for a great variety of studies which have enriched our understanding of the evolution of Québec society.<sup>63</sup> BAnQ wishes that the present guide and the PISTARD data base might encourage and facilitate even more the use of this extremely important part of the documentary heritage of Québec.

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63. Here are four examples of this trend: Marie-Aimé CLICHE, « Les procès en séparation de corps dans la région de Montréal », *Revue d'histoire de l'Amérique française*, vol. 49, no 1, p. 3-33; Tamara MYERS et autres, (dir.) *Power, Place and Identity: Studies of Social and Legal Regulation in Quebec*, Montréal, Groupe sur l'histoire de Montréal, 1998, 182 p.; René HARDY, *Contrôle social et mutation de la culture religieuse au Québec 1830-1930*, Montréal, Boréal, 1999, 284 p.; Donald FYSON, *Magistrates, Police and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764-1837*, Toronto, Osgoode Society for Canadian Legal History, 2006, 467 p.

# 1 **A p p e n d i x 1**

## The Evolution of Court Structures

1638-1759

## NEW FRANCE

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
<b>Sovereign Council and Superior Council (TP1)</b> Established by the royal edict of April 1663, this tribunal enjoys full authority, both civil and criminal. Also court of appeals for the colony. This institution combined the roles of court and legislative body, passing local ordinances to modify, if necessary, the laws and ordinances of France.		
<b>Bailliage of Montréal (TL2)</b> Seigneurial court existing from 1648 to 1693 and exercising lower, middle and high justice, both civil and criminal, on the Island of Montréal, the Sulpicians' fief. After 1793, the Sulpicians maintained a special position, the appeals from their court going directly to the Sovereign Council, bypassing the local royal court .	<b>Prévôté of Québec (TL1)</b> Court hearing appeals from seigneurial courts on its territory, named <i>le détroit de la prévôté</i> .	
<b>ROYAL COURTS</b> <b>Prévôté of Québec (TL1)</b> Established by the royal edict of May 1677, a tribunal exercising a mixed trial court jurisdiction, civil and criminal, in the city of Québec and its hinterland. <b>Royal Jurisdiction of Trois-Rivières (TL3)</b> Established by the royal edict of June 1680, a tribunal having the same authority as the Prévôté of Québec in the city of Trois-Rivières and its hinterland. <b>Royal Jurisdiction of Montréal (TL4)</b> Established by the royal edict of 1693, a tribunal exercising a mixed trial court jurisdiction, civil and criminal, on the Island of Montréal, with the exception, until 1717, of the enclave of the Seminary and farm Saint-Gabriel. The Baillage however continued to exercise lower justice, notably the right to hear suits concerning seigneurial rights.		<b>Royal Jurisdiction of Trois-Rivières (TL3)</b> Like the Prévôté, a tribunal hearing appeals from seigneurial courts on its territory.
<b>Seigneurial Courts (TL)</b> Courts established in several seigniories, mainly those whose seigniors were religious orders. Rarely exercising the full range of lower, middle and high justice, as seigniors usually settled for lower justice, which allowed them to hear suits concerning seigniorial rights. Powers limited to the territory of the seignior. A few seigniorial courts were established before the royal courts, for example, the Seigneurial Court of Trois-Rivières, functioned from 1638 to 1674.		

1760-1763

## MILITARY REGIME

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
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### Québec Military Council [Conseil militaire de Québec] (TL9)

Established by Governor James Murray in 1760, a tribunal exercising a mixed civil and criminal jurisdiction in the territory of the Government of Québec. Officers acting as judges sat in cases too serious to be settled on the spot by the governor or one of his officers. Litigants could appeal decisions by the commander in their area to the Military Council. Otherwise, summary decisions.

### Montréal Militia Chamber and Military Council [Chambres de milice et Conseils militaires de Montréal] (TL)

Decentralized judicial institutions established by Thomas Gage in 1761 for the Government of Montréal. Five sub-territories formed, each with an audience chamber, hearing civil and criminal cases, and a military council, composed of British officers, for appeals. Those accused of capital crimes brought by militia captains to the Montréal Chamber.

### Trois-Rivières Militia Chamber [Chambre de milice de Trois-Rivières (ou du district de Champlain)] (TL13)

Decentralized judicial institution similar to the one in Montréal, established by Frederick Haldimand in 1762 for the Government of Trois-Rivières. Four militia chambers and three military councils for appeals created for the region. All criminal cases heard in Trois-Rivières, except for infractions to Commander Haldimand's ordinances, which were heard before the militia chambers.

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# 1764-1774

## ORDINANCE ESTABLISHING CIVIL COURTS, SEPTEMBER 17, 1764 (D.C., VOL. 1, P. 180). ESTABLISHMENT OF TWO JUDICIAL DISTRICTS (QUÉBEC AND MONTRÉAL).

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
<p><b>Court of King's Bench (TP6)</b> Superior jurisdiction (sits in Québec City, two sessions). Power of supervision.</p> <p><b>Courts of Common Pleas (TP5 et TL)</b> Inferior jurisdiction (amounts in excess of 10 louis). Sitting in Québec City and Montréal (becomes autonomous in 1770). Two sessions per year until 1770. From 1770 on, weekly sessions.</p> <p><b>Justices of the Peace (TL)</b> Inferior suits up to 5 louis. Two j.p.s for cases from 5 to 10 louis. Three j.p.s for cases from 10 to 30 louis. Jurisdiction absorbed by Court of Common Pleas in 1770.</p> <p><b>Baillifs and deputy baillifs (TL)</b> In each parish. Disputes between neighbours.</p>	<p><b>Court of King's Bench (TP6)</b> Criminal trial court. Only one authorized to impose capital punishment.</p> <p><b>Courts of the Quarter Sessions of the Peace (TL)</b> Jurisdiction over all offenses not punishable by death. Local municipal administration and supervision of work of road inspectors. No appeal to the King's Bench.</p> <p><b>Police Courts and Weekly Sessions of the Peace (TL)</b> Two justices of the peace sitting in Québec City and Montréal in turn, every week. Summary jurisdiction with appeals to the Quarter Sessions.</p> <p><b>Justices of the Peace (TL)</b> Minor misdemeanours subject to fines or imprisonment.</p>	<p><b>Judicial Committee of the Privy Council (London)</b> Appeal from decisions of the governor and his council for cases exceeding 500 louis.</p> <p><b>Governor et Council (Court of appeal) (TP3)</b> Review of decision from the King's Bench and Common Pleas for cases exceeding 300 louis.</p> <p><b>Court of King's Bench (TP6)</b> Review of decisions from the Common Pleas for cases exceeding 20 louis and for those from three justices of the peace.</p> <p><b>Three Justices of the Peace (TL)</b> Review sentences from bailiffs and arbitrators in disputes between neighbours.</p>

# 1775-1777

**QUÉBEC ACT ABOLISHING FORMER TRIBUNALS AS OF MAY 1, 1775.  
RESULTING NOMINATION OF JUDGES AND OFFICERS OF JUSTICE FROM THAT DATE.  
PERIOD OF UNCERTAINTY BETWEEN MAY 1, 1775 AND THE COMING INTO EFFECT  
OF THE ORDINANCE CREATING NEW COURTS OF JUSTICE, FEBRUARY 25, 1777.  
REORGANIZATION BY CARLETON APRIL 20, 1775.**

<b>CIVIL JURISDICTIONS</b>	<b>CRIMINAL JURISDICTIONS</b>	<b>APPEALS</b>
<p><b>Civil Magistrates (TL)</b> (District of Québec)</p> <p>Nominated July 23rd, 1776.</p> <p><b>Keepers of the Peace (TL)</b> (Québec City and Montréal)</p> <p>Nominated April 20th, 1775 (until September). Functioned very briefly, as martial law was proclaimed.</p>	<p><b>Keepers of the Peace (TL)</b> (Québec City and Montréal)</p> <p>Nominated April 20th, 1775 (until September). Functioned very briefly, as martial law was proclaimed.</p>	<p><b>Judicial Committee of the Privy Council (London)</b></p> <p>Appeal from decisions of governor and his council for suits exceeding 500 louis.</p> <p><b>Provisional Court of Appeals (TP7)</b></p> <p>Ordinance of July 23rd, 1776. Composed of governor, lieutenant-governor, chief justice and members of Council, with quorum of five.</p>

1777-1793

**ORDINANCE TO ESTABLISH COURTS OF JUSTICE IN THE PROVINCE OF QUÉBEC  
(D.C., VOL. 2, P. 661-662) (17 GEO. III, c. 1).**

**PROVINCE DIVIDED INTO TWO DISTRICTS (QUÉBEC AND MONTRÉAL)  
WITH THREE RESIDENT JUDGES IN EACH DISTRICT.**

<b>CIVIL JURISDICTIONS</b>	<b>CRIMINAL JURISDICTIONS</b>	<b>APPEALS</b>
Ordinance 17 George III, c. 1	Ordinance 17 George III, c. 5	Ordinance 17 George III, c. 1, c.5
<p><b>Courts of Common Pleas (TL)</b></p> <p>Judges sitting in Québec City and Montréal every week with court recess of three weeks at sowing, one month at harvest, fifteen days at Christmas and Easter. Two judges for suits exceeding 10 louis (one day a week). One judge for suits less than 10 louis (one day a week). On circuit two times a year in each district.</p> <p><b>Courts of Requests (TL)</b></p> <p>Established by the ordinance of 1788. Cases less than 10 louis. “Circles” established at Saint-Jean in 1788, at L’Assomption, at Varennes and at La Prairie in 1790. Abolished by article 33 of 34 Geo. II, c. 6, in 1793.</p>	<p><b>Court of King’s Bench (TP6)</b></p> <p>Presided over by chief justice or by commissioners, in his absence. Two terms yearly in Québec City (first Tuesdays of May and November). Two terms yearly in Montréal (first Mondays in March and September). Criminal trial court with sole authority to impose death sentence.</p> <p><b>Courts of General Sessions of the Peace (TL)</b></p> <p>Sessions in Québec City and Montréal held quarterly by two Commissioners (second Tuesday of January, April, July and October). Jurisdiction over all offenses not subject to death sentence. Justice of the peace provide local municipal administration and supervise work of road inspectors.</p> <p><b>Police Courts and Weekly Sessions of the Peace (TL)</b></p> <p>Two justices of the peace sitting in Québec City and Montréal in turn, every week.</p> <p><b>Commissions of oyer and terminer and general gaol delivery</b></p> <p>Special sessions of the criminal assizes (King’s Bench) held, as needed, on governor’s decision. Borrowed from English practice. Use of these commissions remains possible until present. Records integrated with those of King’s Bench.</p> <p><b>Commissioners or justices of the peace</b></p> <p>Minor misdemeanours subject to fines or imprisonment.</p>	<p><b>Judicial Committee of the Privy Council (London)</b></p> <p>Appeal from decisions of Court of Appeals for suits exceeding 500 louis.</p> <p><b>Court of Appeals (TP7)</b></p> <p>Same composition as in the ordinance of July 23rd, 1776.</p> <p>Jurisdiction over suits exceeding 10 louis and over lesser sums if it concerns dues payable to the Crown, official fees, annual annuities or other matters implying future rights.</p> <p>Review and examination of all procedural acts from inferior civil and penal courts and correction of errors of fact and law.</p>



# 1793-1849

## JUDICATURE ACT OF 1793 (34 GEORGE III, C. 6) DIVIDING LOWER-CANADA INTO THREE DISTRICTS: QUÉBEC, MONTRÉAL AND TROIS-RIVIÈRES AND ESTABLISHING A NEW COURT STRUCTURE.

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
34 George II, c. 6: three initial districts (Québec, Montréal, Trois-Rivières)		
<p><b>Court of King's Bench (Queen's Bench from 1843 on)</b></p> <p>Judges sitting in Québec City and in Montréal: four superior terms (suits exceeding 10 louis; 20 in 1843); six inferior sessions (suits for less than 10 louis judged summarily (no appeals); up to 20 louis in 1843). In 1841, commissioner for King's Bench takes over inferior terms to eliminate backlog on the roles of the King's Bench in Montréal. By the statute of December 9, 1843 (7 Vict., c. 16-19) return to former status: Queen's Bench has double jurisdiction as civil trial court, overlapping Circuit Court, up to 20 louis.</p> <p><b>Provincial Court</b></p> <p>Established in 1793 in Trois-Rivières and in Gaspé. Trois-Rivières: six inferior terms, two superior terms; becomes King's Bench in 1830; Gaspé: cases exceeding 20 louis. Established in Sherbrooke in 1823 (suits exceeding 20 louis), becomes King's Bench in 1833.</p> <p><b>Circuit Court</b></p> <p>Established in every county of districts of Québec and of Montréal, except for the counties of Québec, Montréal, Gaspé and Orléans. A judge of the King's Bench went on circuit once a year for suits where the sum at stake was less than 10 louis. From 1840 on, judges of the Court of Common Pleas sat on circuit. From 1841 on, commissioner of the Queen's Bench took over the jurisdiction. In 1843, return to previous situation (cases less than 10 louis).</p>	<p><b>Court of King's Bench (Queen's Bench from 1843 on)</b></p> <p>Two terms. From 1840 on, criminal trial court (4 Vict., c. 45).</p> <p><b>Court of General Sessions of the Peace</b></p> <p>Held quarterly (Québec City, Montréal, Trois-Rivières, Gaspé). Presided over by one to three justices of the peace.</p> <p><b>Courts of General or Quarter Sessions of the Peace</b></p> <p>Established in 1840 (4 Vict., c. 43). Held by two j.p.s (judges of the King's Bench are j.p.s). From 1843 on, judges of the Circuit Court presided over Quarter Sessions.</p> <p><b>Justices of the Peace</b></p> <p>Minor misdemeanours subject to fines or imprisonment.</p> <p><b>Court of commissioners of the Peace</b></p> <p>Established in 1840: Ordinance of February 6, 1840 (4 Vict., c. 26).</p>	<p><b>Judicial Committee of the Privy Council (London)</b></p> <p>Appeal from decisions of Court of Appeals for suits exceeding 500 louis.</p> <p><b>Provincial Court of Appeals Or Superior Tribunal of Civil Jurisdiction</b></p> <p>Composed like the former Court of Appeals. Four terms in Québec City. Appeal from judgments rendered by inferior courts in Québec City, in Montréal and in Trois-Rivières for suits exceeding 20 louis or implying Crown rights. Appeals on errors or points of law from jury verdicts. Abolished in 1843 (7 Vict., c. 18).</p> <p><b>Court of Appeals of Lower Canada</b></p> <p>Established in 1843 (7 Vict., c. 18).</p> <p>Civil and criminal jurisdiction. Three terms held alternately in Québec City and in Montréal.</p> <p><b>Court of King's Bench</b></p> <p>In superior terms, judges can review decisions concerning Crown affairs coming from inferior terms of the King's Bench and from the Provincial Courts. From 1822 on, various statutes authorize appeals from inferior terms, then finally from district courts and circuit courts to inferior terms for suits exceeding first 20 then 10 louis: 2 Geo. IV, c. 5 (1822), 3 Geo. IV, c. 17 (1823), 6 Geo. IV, c. 17 (1826), 4-5 Vict., c. 20 (1841), 7 Vict., c. 16 (1843).</p>

# 1793-1849 (continuation)

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
<p><b>Commissioners Courts (TL)</b></p> <p>Installed by the Act of March 17, 1821 in effect May 1st (1 Geo. IV, c. 2). In country parishes, except for the counties of Montréal and Québec, as well as the city of Trois-Rivières.</p> <p>Jurisdiction over suits worth less than \$24 (4 pounds, 3 shillings, 4 pence).</p> <p>Act revised in 1832 and modified in 1836 to authorize opening these courts in these three cities (petition of 200 property owners). Replaced in 1839 by Circuit Courts of Requests. Abolished in 1841. Reinstated in 1843. Abolished in Québec City, in Montréal and in Trois-Rivières in 1849 (12 Vict., c. 38). Judges sitting the first and second Saturdays in each month.</p> <p><b>Circuit Courts of Requests (TL)</b></p> <p>Districts of Québec, of Montréal and of Trois-Rivières. Established by the ordinance of April 11, 1839 (2 Vict., c. 58). Absorb the jurisdiction of the Commissioners' Courts for Small Claims (except for Saint-François and Gaspé). Held by commissioners who carry out circuits in the district, are justices of the peace and preside over Quarter Sessions of the Peace. Abolished September 18, 1841 (4-5 Vict., c. 26).</p> <p><b>District Courts held by sheriffs (TL)</b></p> <p>Established by ordinance of June 25, 1840, in effect December 1st (4 Vict., c. 43). Suits for amounts less than 20 louis. Courts abolished September 18, 1841 (4-5 Vict., c. 26).</p>		<p><b>Courts of Common Pleas</b></p> <p>Appeals from decisions in suits exceeding 15 louis coming from District Courts.</p>

# 1793-1849 (continuation)

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
<p><b>Courts of Common Pleas</b></p> <p>Established by ordinance of Juin 26, 1840. In effect from December 1st (4 Vict., c. 45) (never proclaimed). Made up of nine judges. Inherited civil jurisdiction formerly attributed to King's Bench. Superior suits to 20 louis, except those concerning official emoluments, annual annuities, etc. Inferior terms for suits less than 20 louis. Judges sitting on circuit.</p> <p><b>Division and District Courts (TL)</b></p> <p>Established in 1841 (4-5 Vict., c. 20). Creation of 22 districts in the two divisions of Québec and of Montréal. Judges sitting in chief places (districts) and in the districts (divisions). District courts had authority over suits where the sum at stake was over 6 pounds 5 shillings but less than 20 pounds. Division Courts heard cases worth less than 6 pounds 5 shillings. Abolished in 1843.</p> <p><b>Justices of the Peace (TL)</b></p> <p>Statute of 1807 (47 Geo. III, c. 13) authorized j.p.s in certain townships and seigniories to render summary justice in cases of debt recovery for amounts of less than 5 pounds. In 1817 (57 Geo. III, c. 14), j.p.s authorized in all parishes to hear cases concerning fences, ditches and damages caused by animals for amounts under 3 pounds. In 1819 (59 Geo. III, c. 14), j.p.s authorized to hear cases for sums less than 4 pounds, 3 shillings, 4 pence outside the counties of Québec, of Montréal and of Saint-Maurice.</p>		

# 1849-1867

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
12 Vict., c. 38	12 Vict., c. 37	12 Vict., c. 37
<p><b>Superior Court (TP11)</b> Established in 1849 by 12 Vict., c. 38. General trial court with power over all matters except those reserved specifically to another court.</p> <p><b>Circuit Court (TP10)</b> (for districts and counties) Established by 12 Vict., c. 38. Inherited the jurisdiction of the King's Bench in inferior terms. Presided by judges of the Superior Court or of the Circuit Court. All civil suits for amounts less than 50 pounds. Appeal to the Superior Court for cases worth more than 15 pounds. Summary judgments for cases worth less than 15 pounds. Office of Circuit Court Judge abolished in 1857 (20 Vict., c. 44); replace by judges of the Superior Court.</p>	<p><b>Court of Queen's Bench (TP9)</b> Established in 1849 by 12 Vict., c. 37. Composed of four judges. Loss of former civil trial court jurisdiction to become Court of Appeals with a quorum of three. Judges sitting in Québec City and Montréal. Criminal trial court jurisdiction maintained. Judges of Superior Court could preside in absence or because of incapacity of judges of Queen's Bench.</p> <p><b>Judges of the Sessions of the Peace (TL)</b> In 1849 (12 Vict., c. 37), judges of the sessions could be named for Québec City and Montréal, with jurisdiction over entire province. Judges sitting in General Sessions of the Peace but having, as judges of the Sessions, provincial rather than local authority. In 1850 (13-14 Vict., c. 34), two justices of the peace or a judge of the Circuit Court could hold sessions at Québec City, at Montréal, at Trois-Rivières and at Sherbrooke (district of Saint-François). In 1857 (20 Vict., c. 44), judges of Superior Court could preside over sessions, except in Québec City and Montréal. Where the recorder, or inspector or superintendent of police sat in the Recorder's Court (ancestor of the municipal court), established in 1851 in Montréal and in 1856 in Québec City.</p> <p><b>Superior Court</b> Judges sitting for the Queen's Bench. From 1857 on (20 Vict., c. 44), exercising the powers of the Quarter Sessions of the Peace where this court did not exist.</p>	<p><b>Judicial Committee of the Privy Council (London)</b> Appeal from decisions of Queen's Bench, appeals side, for suits exceeding 500 pounds.</p> <p><b>Court of Queen's Bench (TP9)</b> Four judges, with a quorum of three, sitting in Québec City and Montréal. Exclusive authority over appeals in civil matters. Appeals on errors for criminal cases. Appeal allowed for suits in excess of 25 pounds or dealing with Crown affairs (1857: 20 Vict., c. 44).</p> <p><b>Court of Review (TP11)</b> Intermediate appeal jurisdiction consisting of three judges of the Superior Court revising the decisions of a single judge of the same court. (27-28 Vict., c. 39, art. 20). Abolished in 1920 (10 Geo.V, c. 79).</p> <p><b>Superior Court</b> Appeals from the Circuit Court for cases in excess of 15 pounds or concerning Crown affairs.</p>

# 1867-1988

**B.N.A. ACT OF 1867 CONFERS POWER TO ORGANIZE CIVIL AND CRIMINAL COURTS ON PROVINCES;  
FEDERAL PARLIAMENT PRESERVES RIGHT TO ESTABLISH SOME FEDERAL COURTS, NOTABLY A COURT OF  
APPEALS, AND TO NAME THE JUDGES OF THE SUPERIOR COURTS OF THE PROVINCES.  
FIRST CODE OF CIVIL PROCEDURE GOES INTO EFFECT JUNE 28, 1867.**

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
<p><b>Superior Court (TP11)</b></p> <p>Every suit or petition that is not exclusively in the jurisdiction of the Circuit Court.</p> <p>Power of supervision, of reform and of control over inferior courts (attributed at its creation in 1849).</p> <p><b>Circuit Court (TP10)</b></p> <p>Presided over by judges of the Superior Court. Judges sitting in every judicial district and, if a district includes several counties, in each county.</p> <p>Decisions on any suit where the amount claimed is less than \$200. Jointly with Superior Court has power of control and supervision of Commissioners Courts and justices of the peace.</p> <p>Writs of certiorari can be issued against same inferior courts. Appeal possible when amount at stake is in excess of \$100, if it concerns official dues, an annuity, etc. Possibility of evocation to Superior Court.</p> <p>In 1888, provincial legislature attempts to abolish this court in Montréal, to replace it with a Magistrate's Court. Disallowance by federal government. New provincial attempt in 1889, but not involving repeal of Circuit Court. Second disallowance, but Magistrate's Court functioned until 1893.</p> <p>Between 1871 and 1886, transfer of the appealable jurisdiction (suits over \$100, but less than \$200) from Circuit Court to Superior Court in chief places, but retention in other locations where Circuit Court sits.</p>	<p><b>Court of Queen's Bench (TP9)</b></p> <p>Superior criminal trial court until 1974 (LQ 1974, c. 10). From 1920 on, judges of Superior Court sit on the Queen's Bench in its criminal trial court jurisdiction.</p> <p><b>Superior Court (TP11)</b></p> <p>From 1920 on, judges of Superior Court have exclusive power to preside over criminal assizes with juries, but acting as judges of the Queen's Bench. From 1974 on (LQ 1974, c. 10), replaces Queen's Bench.</p> <p><b>Courts of General Sessions of the Peace (TL)</b></p> <p>Inferior courts with jurisdiction in criminal and penal matters in the cities of Montréal and Québec City, for all criminal offenses, except those exclusively assigned to Queen's Bench until 1908, when the Court of the Sessions of the Peace replaces them.</p> <p><b>Justices of the Peace (TL)</b></p> <p>Minor misdemeanours subject to fines or imprisonment.</p> <p><b>Court of the Sessions of the Peace (TP12)</b></p> <p>Established in 1908 (8 Edouard 7, c. 42). Exercising powers of Courts of General Sessions of the Peace, but tribunal having authority over the entire province, even if only sitting initially in Montréal and Québec City. Judges began sitting in other districts between 1945 and 1955.</p>	<p><b>Judicial Committee of the Privy Council (London)</b></p> <p>Appeal from decisions of the Queen's Bench relative to property rights, to official revenues, to annuities or to sums payables to the Crown or in all suits where the amount claimed is in excess of 500 pounds sterling, until 1949. At that date, Supreme Court of Canada becomes final appeals court. Previously, appeals could pass either directly from provincial appeal courts to Privy Council, or through intermediate stage of Supreme Court of Canada.</p> <p><b>Court of Queen's Bench (TP9)</b></p> <p>Appeal court in civil and criminal matters. Judges sitting alternately in Québec City and in Montréal. Appeal from final decisions of Superior Court and from those of Circuit Court when amount of suit is in excess of \$100 (1867). Minimal monetary limit for an appeal, when no point of law is involved, was increased several times, situated at \$10,000 since 1984 (LQ 1984, c. 26).</p> <p><b>Court of Queen's or King's Bench (TP9)</b></p> <p>Appeal to Queen's Bench from certain interlocutory judgments and powers on warrant of error from every judgment of the Superior Court based on a jury's verdict. After abolition of Review Court in 1920, appeals jurisdiction of Queen's Bench separated into 2 divisions: one of three judges and the other of five judges. In 1928, once again a court of only five judges.</p>

# 1867-1988 (continuation)

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
<p><b>Circuit Court (TP10) (continuation)</b></p> <p>In 1922-1923, non appealable jurisdiction (suits less than \$100) transferred to Magistrate's Court except in Montréal (11 Geo.V, c. 100 and 12 Geo.V, c. 64). In 1945, Montréal's was also transferred (9 Geo.VI, c. 19).</p> <p>Abolished definitively in 1953 with confirmation of the transfer of its jurisdiction to the Magistrate's Courts. (1-2 Eliz. II, c. 18).</p> <p><b>Tribunals of the Justices of the Peace (TL)</b></p> <p>Tribunals playing an important role in the administration of justice in rural areas. J.p.s presided over these courts, named by the Lieutenant-Governor in council. Must conform to qualifications set by law. Lawyers excluded from this office.</p> <p>Jurisdiction over following civil matters: school tax recovery, subscriptions for building or repairing churches, presbyteries and cemeteries, damages caused by animals or other disputes between masters and servants outside cities, sailors' wages, claims of borrowers against pawn brokers.</p> <p>No appeal from decisions of j.p.s in civil cases. Only recourse: writ of certiorari.</p> <p><b>Commissioners' Courts (TL)</b></p> <p>Created in 1843 (7 Vict., c. 19). Rural institutions. Presided over by citizens with no legal training.</p>	<p><b>Magistrate's Courts (TL)</b></p> <p>Criminal jurisdiction of district magistrates goes back to 1869 legislation. Magistrates Exercising same powers as judges of Sessions of the Peace. Few magistrates courts exist after 1878; reorganized in 1922 and new courts established where ever the Circuit Court sat. Outside Montréal and Québec City, magistrate's courts exercise inferior criminal jurisdiction Until the Court of the Sessions of the Peace begins to sit in each locality.</p> <p><b>Juvenile Delinquents Court in and for the City of Montréal (TL)</b></p> <p>Established in 1910 (1 Geo.V, c. 26), tribunal assuming criminal and penal jurisdiction over minors. Local jurisdiction. Creation tightly linked to collaboration from the city, as much for operation of court as for guarantee of existence of a reform school for minors.</p> <p>In 1941 (SRQ 1941, c. 15, art. 253-261), jurisdiction of court extended over whole island of Montréal, subject to arrangements with interested municipalities. Article 226 allows establishment of this court in every judicial district or group of districts including a city with at least 50,000 inhabitants or several cities whose combined population reach this level. However, initially no municipalities, other than Québec City, wanted to set up such a court.</p> <p><b>Québec Juvenile Delinquents Court (TL)</b></p> <p>Established for Québec City By the statute SRQ 1941, c. 15, art. 261-266.</p>	<p><b>Review Court (TP11)</b></p> <p>Jurisdiction established in 1864 (27-28 Vict., c. 39, art. 20). Appeal to three judges of the Superior Court from a decision of one of their colleagues. With authority to hear all matters capable of being sent to the appeals side of the Queen's Bench. Judges sitting only in Québec City and Montréal. Created to preclude cost of appeals to Queen's Bench.</p> <p><b>Supreme Court of Canada</b></p> <p>Created in 1875 (SC 1875, c. 11). Until 1949, subordinate appeal court; final appeal was to Judicial Committee of the Privy Council in London. Appeals could pass directly from provincial courts of appeal to Privy Council, without going through Supreme Court.</p> <p>From 1949 on, is highest court in country (SC 1949, c. 37). As such, hears appeals from provincial courts of appeals as well as from Federal Court (previously Court of Exchequer).</p> <p>In 1867, accepted appeals in civil matters for suits in excess of \$2,000. Right of appeal in all civil suits of more than a certain amount disappears in 1974 (when limit was \$10,000). Since then, appeal on permission only, when the highest court believes that it should intervene because of the importance of the case for the public, the importance of the legal aspects involved, or any other kind of importance.</p> <p>Appeals in criminal cases where there is death sentence, and, subject to permission, where there was a legal error during a reversal of an acquittal or the dissenting opinion of a judge of the Court of Appeals.</p>

# 1867-1988 (continuation)

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
<p><b>Commissioners' Courts (TL) (continuation)</b></p> <p>Jurisdiction over cases involving less than \$25; limited to a parish. Some disputes excluded from their jurisdiction: verbal insults, claims for assault, civil status. Courts able to hear petitions on payment of municipal taxes.</p> <p>Authorized to deal with suits for recovery of school taxes and church repair for amounts less than \$25.</p> <p>No appeal from commissioners' decisions. Only authorized recourse is the writ of certiorari, which is only granted in cases where authority is flagrantly exceeded.</p> <p>The cities of Québec City, Montréal and Trois-Rivières excluded. (1849: 12 Victoria, c. 38). Abolished in 1965, after a long period of decline, during the passing of the new Code of Civil Procedure (13-14 Eliz. II, c. 17).</p> <p><b>County Magistrate's Courts (TL)</b></p> <p>Established in 1869 (32 Vict., c. 23, art. 13). Jurisdiction overlapping that of the Circuit Court. Abolished in 1878, except for certain localities. Judges nominated by the provincial government. Original statute authorized the Lieutenant-Governor to establish a civil court with the power to hear cases of a purely personal or movable nature resulting from contracts or quasi contracts in which the sum or value claimed is less than \$25, in any county (later in any district, any county or locality). Also authorized to hear any suit involving the recovery of tithes, school or municipal taxes, or penalties claimed by virtue of Québec City's municipal or fiscal legislation.</p>	<p><b>Family Court</b></p> <p>Court supposed to replace the Juvenile delinquents Court in 1944, (8 Geo.VI, c. 10), after the proclamation of its' creation. However, as there was no proclamation, the law was never applied and the two juvenile delinquent courts continued to sit until 1950, when they were abolished (14 Geo.VI, c. 10).</p> <p><b>Social Welfare Courts (TL)</b></p> <p>Established in 1950 (14 Geo.VI, c. 10), courts of mixed authority (criminal and civil) assuming the powers of the Juvenile Delinquents Courts, as well as the inquiries required by the Québec Act on Old Age Pensions, the hospitalization of indigents, (art. 24 of the Act on Public Assistance, c. 187), the internment and liberation of the insane (art. 11, 13, 41, 42, 69 of the Act on Insane Asylums, c. 188) and the Act on Adoption (c. 234). (Legal references to be found in the Consolidated Statutes of Québec, 1941.)</p> <p><b>Youth Courts (TL)</b></p> <p>Courts replacing the Social Welfare Courts in 1977 (SQ 1977, c. 17).</p>	<p><b>Québec Court of Appeals (TP9/TP15)</b></p> <p>In 1967, this designation was authorized as an alternative to that of the Court of Queen's Bench by the statute 15-16 Eliz. II, c. 18. In 1974 (LQ 1974, c. 11), replaces the older designation. Includes two divisions, sitting in Québec City and in Montréal.</p> <p>Court with full authority to hear appeals from judgments of the Superior Court as well as those of the Provincial Court in matters worth more than \$500 (13-14 Eliz. II, c. 80: 1965). In 1979, the limit for final judgments from the Superior Court raised to \$6,000. (LQ 1979, c. 37). From 1984 on, the limit for cases from both the Provincial and Superior Courts raised to a value equal to or superior to \$10,000.</p> <p>Court also has authority to rule on appeals from judgments or court orders concerning adoptions, on interlocutory judgments, on some other types of appeals, such as those on contempt of court, for which no other recourse exists, as well as judgments or court orders in non contentious matters. On permission from one of its judges, the court may hear appeals on judgments of the Provincial or Superior Courts for which the value at stake is less than \$10,000.</p> <p><b>Superior Court (TP11)</b></p> <p>Judges hear appeals on summary convictions of the judges of Provincial courts, municipal courts and the Court of the Sessions of the Peace.</p>

# 1867-1988 (continuation)

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
<p><b>County Magistrate's Courts (TL) (continuation)</b></p> <p>Magistrate's Court functioning in Montréal from 1888 to 1893 (see "Circuit Court"). Disallowed by the federal government and replaced by a special Circuit Court for the District of Montréal.</p> <p><b>District Magistrate's Courts (TL)</b></p> <p>In 1922-1923, the provincial government generalized the Magistrate's Courts which received the non appealable jurisdiction of the Circuit Court (11 Geo.V, c. 100 and 12 Geo.V, c. 64).</p> <p>In 1953 (1-2 Eliz. II, c. 18), final abolition of the Circuit Court (which had ceased to function even in Montréal in 1945) and Magistrate's Courts become the trial courts for cases involving amounts lower than \$200. In 1963 (11-12 Eliz. II, c. 62), jurisdiction revised to extend to sums lower than \$500.</p> <p>In 1965 (13-14 Eliz. II, c. 80), replaced by the Provincial Court, which had the same powers but jurisdiction over the whole province.</p> <p><b>Social Welfare Courts (TL)</b></p> <p>Established in 1950 by 14 Geo.VI, c. 10, courts of mixed jurisdiction (criminal and civil) adding new powers to those of the Juvenile Delinquent Courts, notably civil powers such as adoption, which continued to be exercised by the Superior Court wherever Social Welfare Courts did not yet sit.</p> <p><b>Provincial Court (TP13)</b></p> <p>Replaces Magistrate's Courts in 1965 (13-14 Eliz. II, c. 17). Inferior civil trial court of records with jurisdiction over the entire province.</p>		<p><b>Review Court in Provincial Matters</b></p> <p>In 1949, creation of an intermediate appeals court by virtue of the Act on summary pursuits (instead of the Court of King's Bench in its criminal jurisdiction) (13 Geo.VI, c. 18). Act never implemented.</p>



# 1867-1988 (continuation)

CIVIL JURISDICTIONS	CRIMINAL JURISDICTIONS	APPEALS
<p><b>Provincial Court (TP13) (continuation)</b></p> <p>Judges sitting in chief place or in additional localities established by proclamation. Court has exclusive jurisdiction over suits where the sum in dispute is lower than \$1,000 (1965), increased to \$15,000 in 1988, except for claims for alimentary pensions and those which are reserved for the Federal Court of Canada. Court also has exclusive authority over suits in execution or nullification of contracts when the interest of the plaintiff is lower than \$1,000 (\$15,000 in 1988) and over claims for recovery of taxes or other sums of money due to a company. Court also holds authority in matters of voluntary deposits as well as by virtue of the Act on Citizenship.</p> <p><b>Small Claims Division (Provincial Court) (TP13)</b></p> <p>Created in 1972 (SQ, 1971, c. 86, later art. 953 to 998 of Code of Civil Procedure).</p> <p>Court exercising exclusive jurisdiction over disputes for sums lower than \$1,000 due to individuals from a debtor residing in Québec. Summary jurisdiction in fiscal matters since September 30, 1984.</p> <p>Decisions not subject to appeal.</p> <p><b>Expropriation Tribunal</b></p> <p>Established in 1973 (SQ 1973, c. 38) (formerly jurisdiction of the Superior Court).</p> <p><b>Youth Courts (TL)</b></p> <p>Courts replacing Social Welfare Courts in 1976 (SQ 1976, c. 17).</p>		

# Since 1988

**MODIFICATION OF THE COURTS OF JUSTICE ACT (SQ 1988, c. 21)  
INSTITUTING A UNIFIED COURT (THE COURT OF QUÉBEC) FROM THE TRIAL COURTS SUBJECT  
TO SUPERVISION BY THE SUPERIOR COURT.**

<b>CIVIL JURISDICTIONS</b>	<b>CRIMINAL JURISDICTIONS</b>	<b>APPEALS</b>
	SQ 1988, c. 21	
<b>Superior Court (TP11)</b> As before, court of common law with jurisdiction over all disputes except those which are reserved to another court.	<b>Superior Court (TP11)</b> Judges continue to exercise exclusive jurisdiction to preside over criminal assizes with juries.	<b>Supreme Court of Canada</b> Jurisdiction unchanged.

**Court of Québec (TP14)**

<b>Civil Division</b> Replaces the Provincial Court.  <b>Civil Division, Small Claims Division</b> Replaces the Small Claims Division of the Provincial Court.  <b>Youth Division</b> Replaces the Youth Courts.  <b>Expropriation Division</b> Replaces the Expropriation Tribunal.	<b>Criminal and Penal Division</b> Replaces the Court of the Sessions of the Peace.  <b>Youth Division</b> Replaces the Youth Courts.	<b>Québec Court of Appeal (TP15)</b> General authority on appeals unchanged.  <b>Superior Court (TP11)</b> Judges hear appeals on summary convictions from justices of the Court of Québec (from the Civil Division, the Criminal and Penal Division and the Youth Division) as well as from municipal courts.
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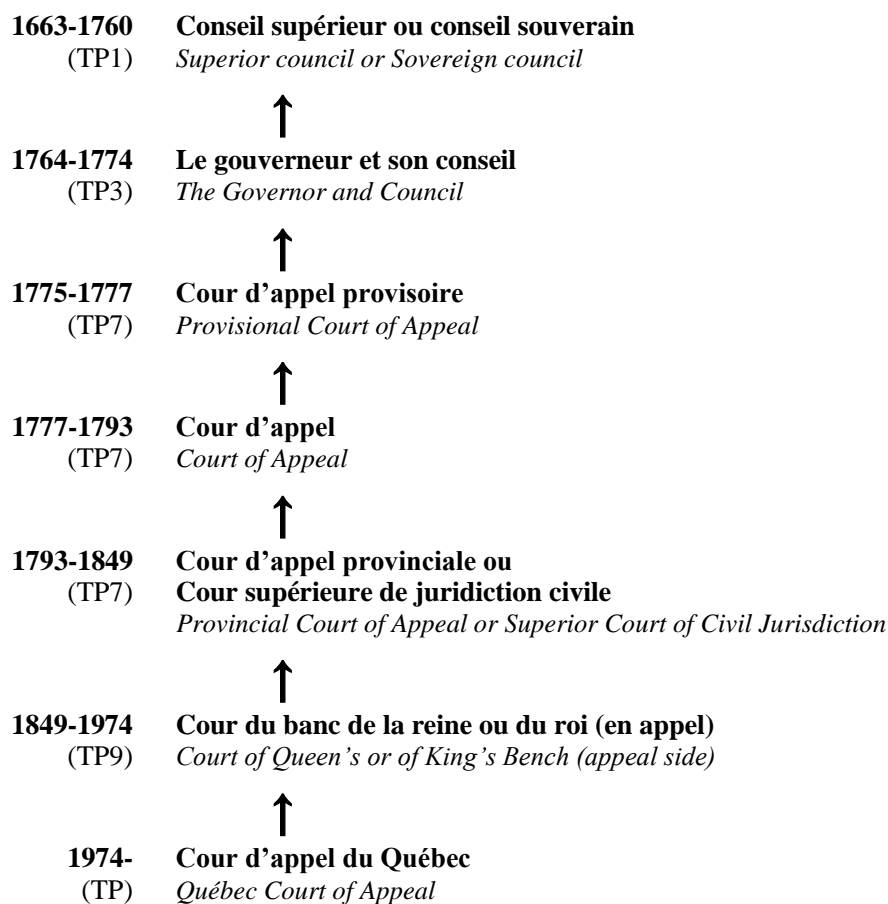
# 2

## **A p p e n d i x 2**

### Family Trees for the Courts

# Family Trees for the Courts\*

## THE COURT OF APPEAL AND ITS ANCESTORS



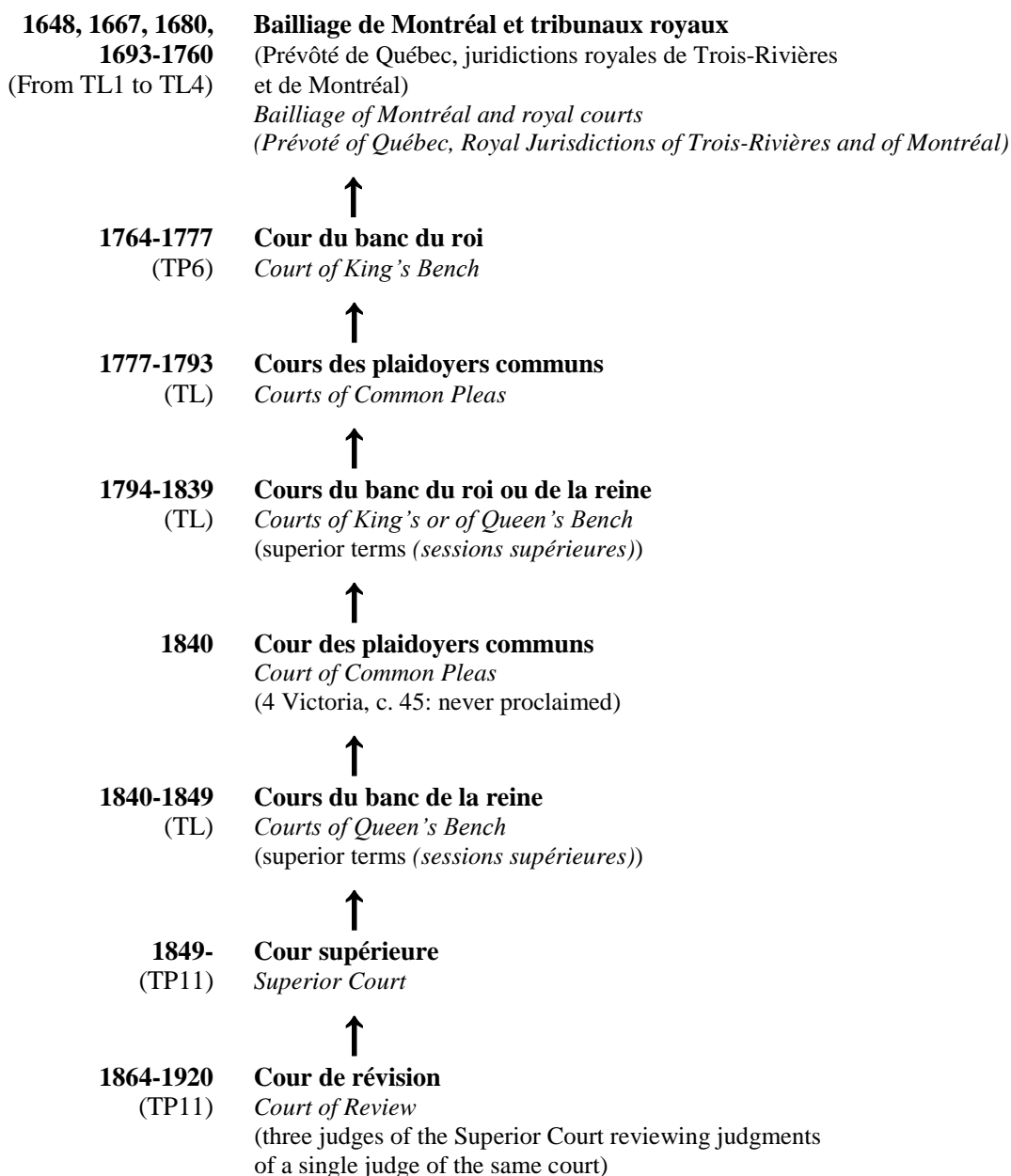

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\* The presence of considerable quantities of documents written in either English or French differentiates court records from other Québec public records. Indeed, since 1763, trials were held in the language of the defendant. As the documents that initiate research can exist in either language, this court genealogy, which traces court names through different eras, provides names in both languages to help both researchers and any interested individuals who undertake the consultation of this rich documentary source.

# Family Trees for the Courts

## THE SUPERIOR COURT AND ITS ANCESTORS

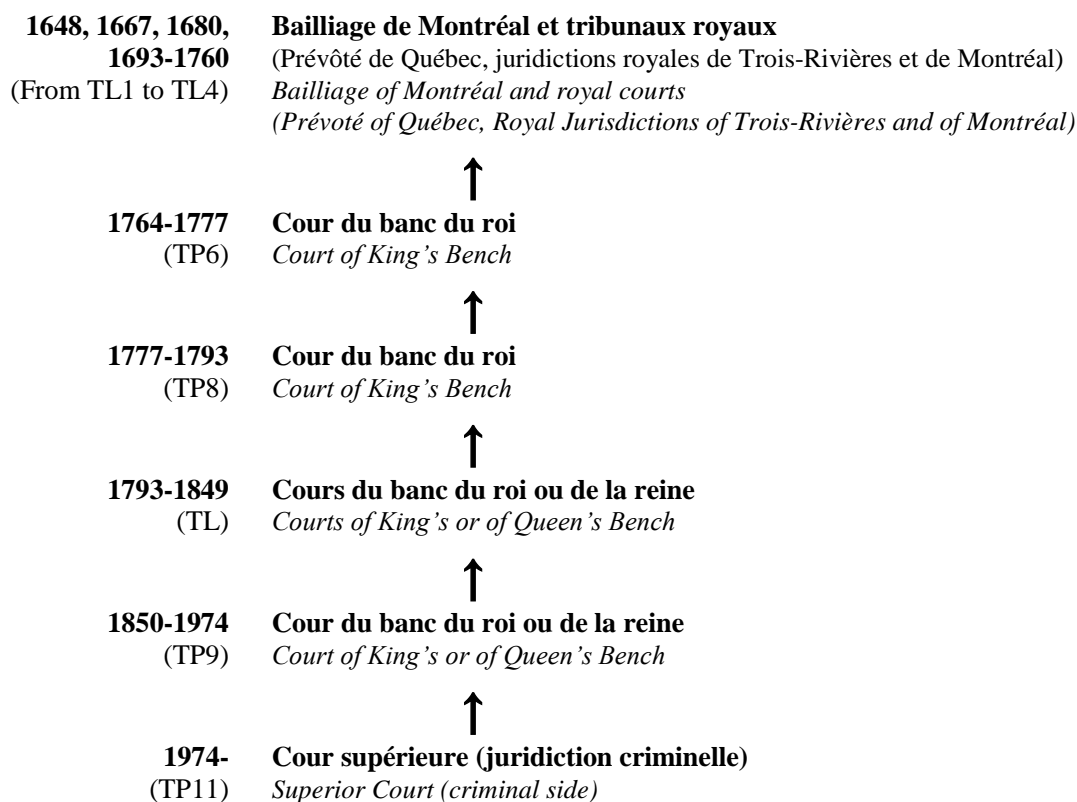
### *SUPERIOR CIVIL JURISDICTION*



# Family Trees for the Courts

## THE SUPERIOR COURT AND ITS ANCESTORS

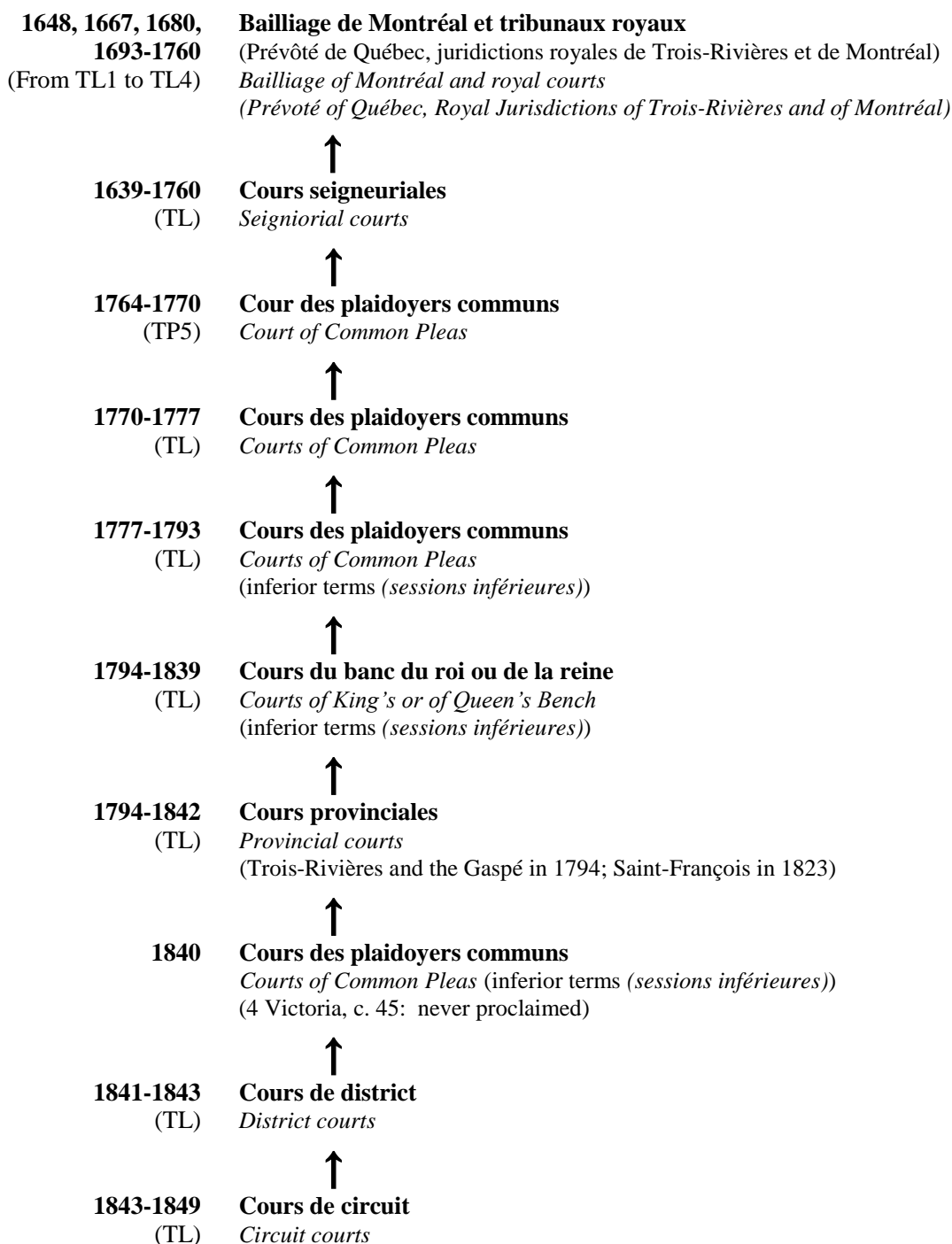
### *SUPERIOR CRIMINAL JURISDICTION*



# Family Trees for the Courts

## THE COURT OF QUÉBEC, CIVIL DIVISION, AND ITS ANCESTORS

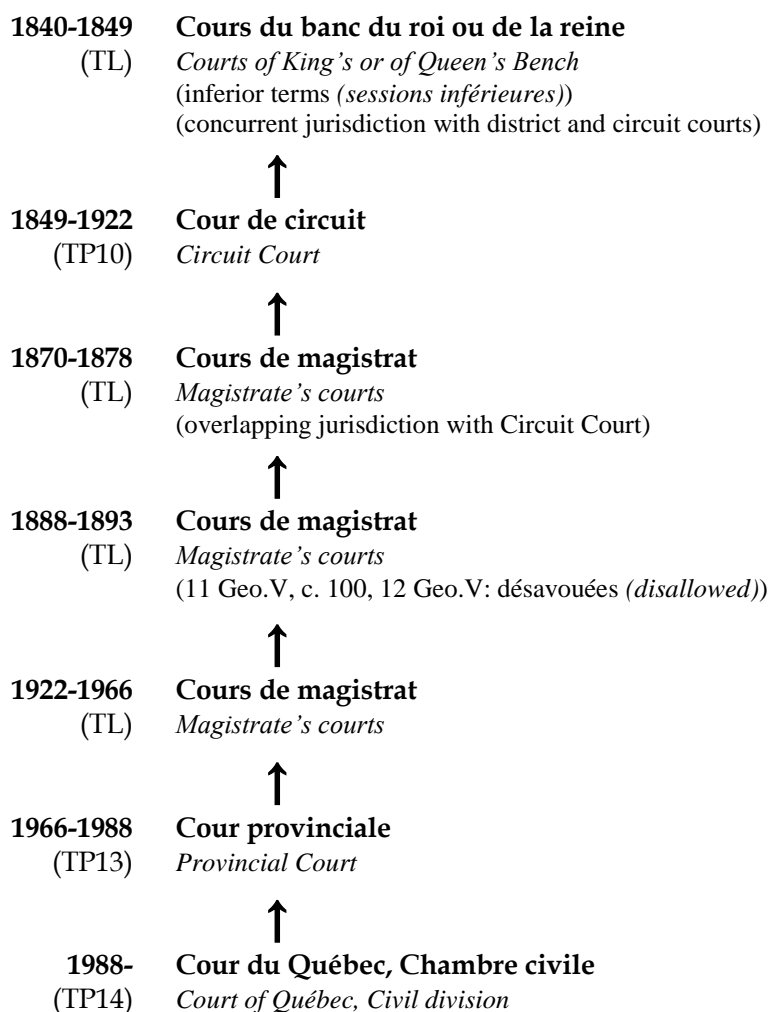
### *INFERIOR CIVIL JURISDICTION*



# Family Trees for the Courts

## THE COURT OF QUÉBEC, CIVIL DIVISION, AND ITS ANCESTORS

### *INFERIOR CIVIL JURISDICTION (continuation)*

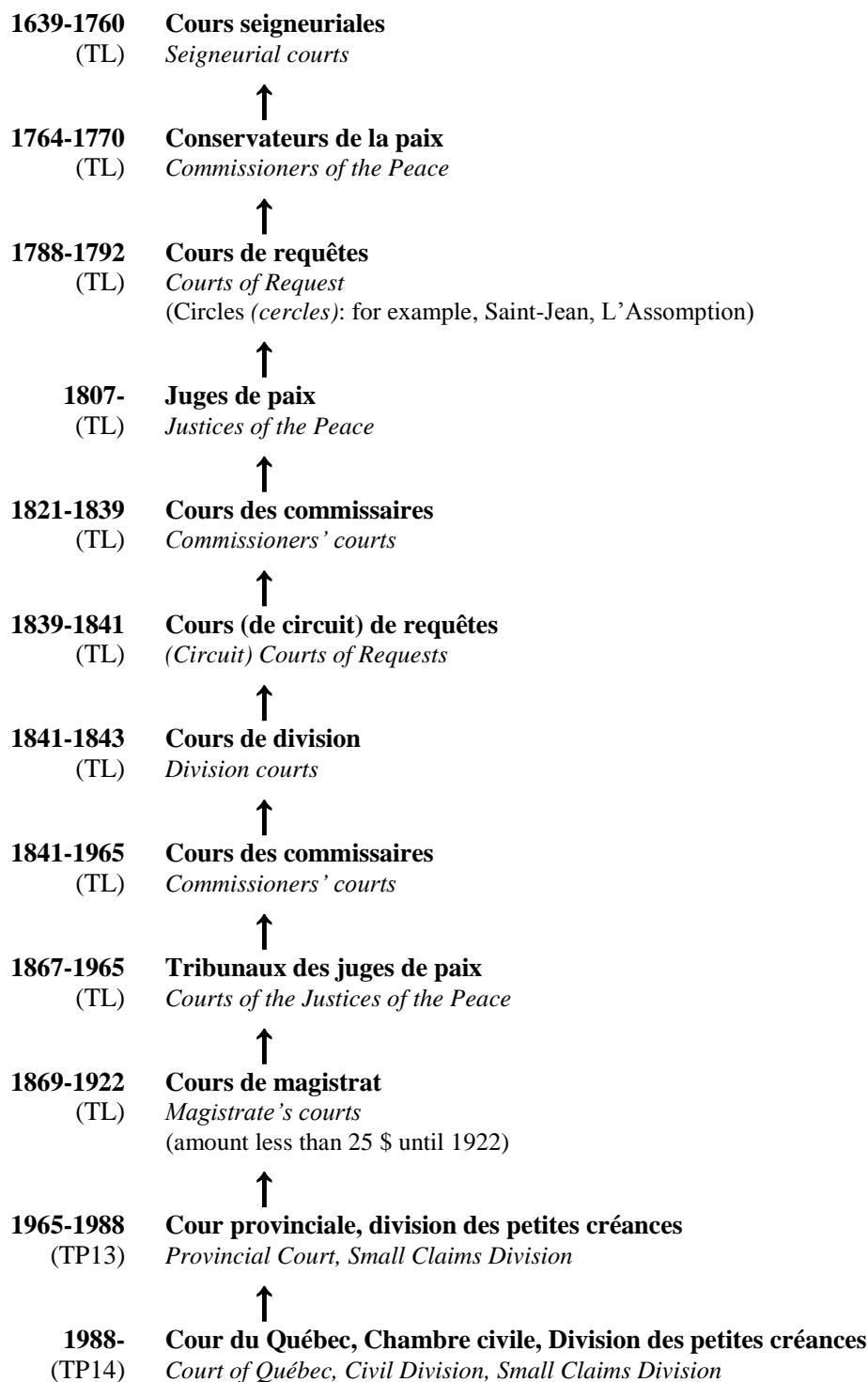




# Family Trees for the Courts

## THE SMALL CLAIMS COURT AND ITS ANCESTORS

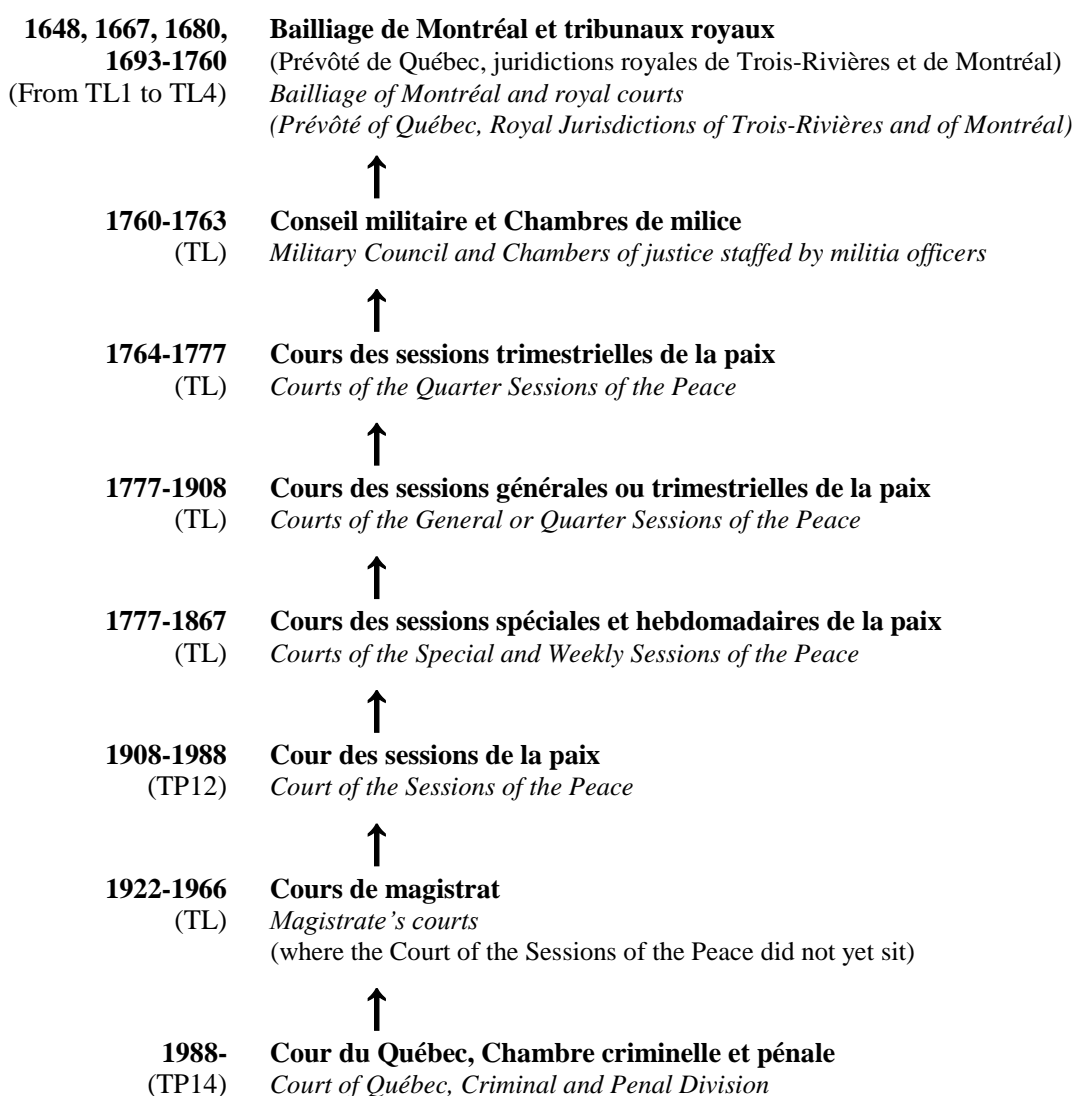
### *SUMMARY CIVIL JURISDICTION*



# Family Trees for the Courts

## THE COURT OF QUÉBEC, CRIMINAL AND PENAL DIVISION, AND ITS ANCESTORS

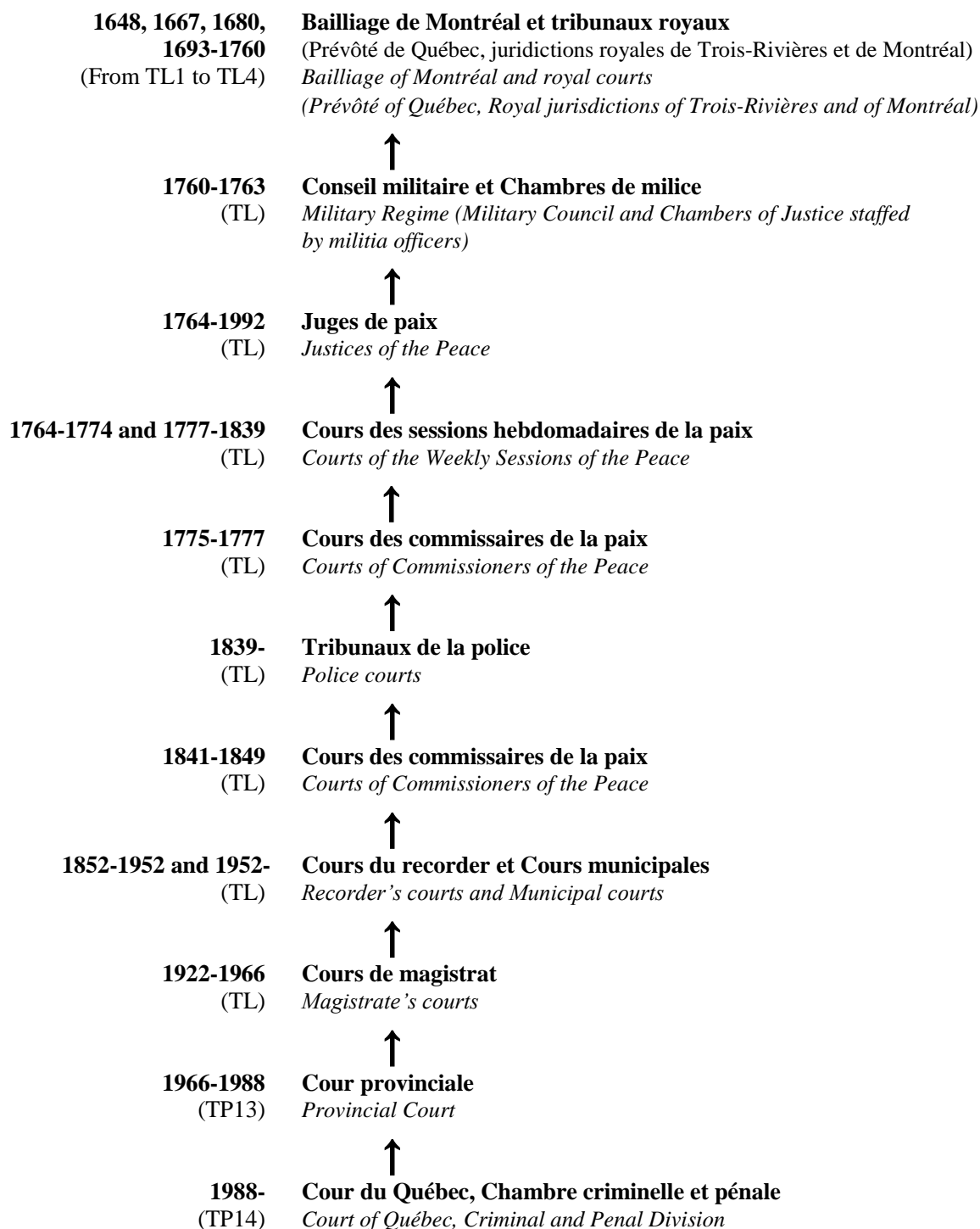
### GENERAL CRIMINAL JURISDICTION



# Family Trees for the Courts

## THE COURT OF QUÉBEC, CRIMINAL AND PENAL DIVISION, AND ITS ANCESTORS

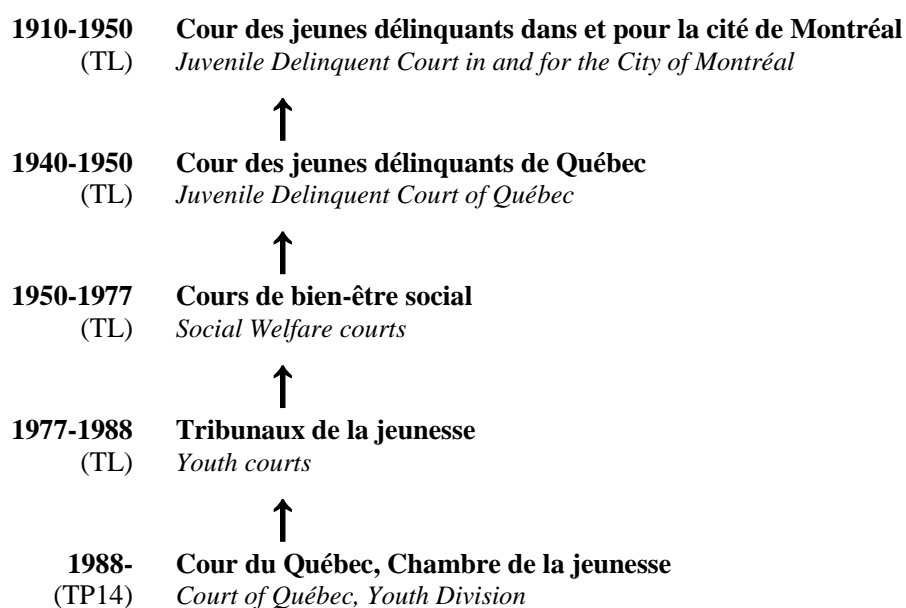
### *SUMMARY CRIMINAL JURISDICTION*



# Family Trees for the Courts

## THE COURT OF QUÉBEC, YOUTH DIVISION, AND ITS ANCESTORS

### *SPECIALIZED JURISDICTION*



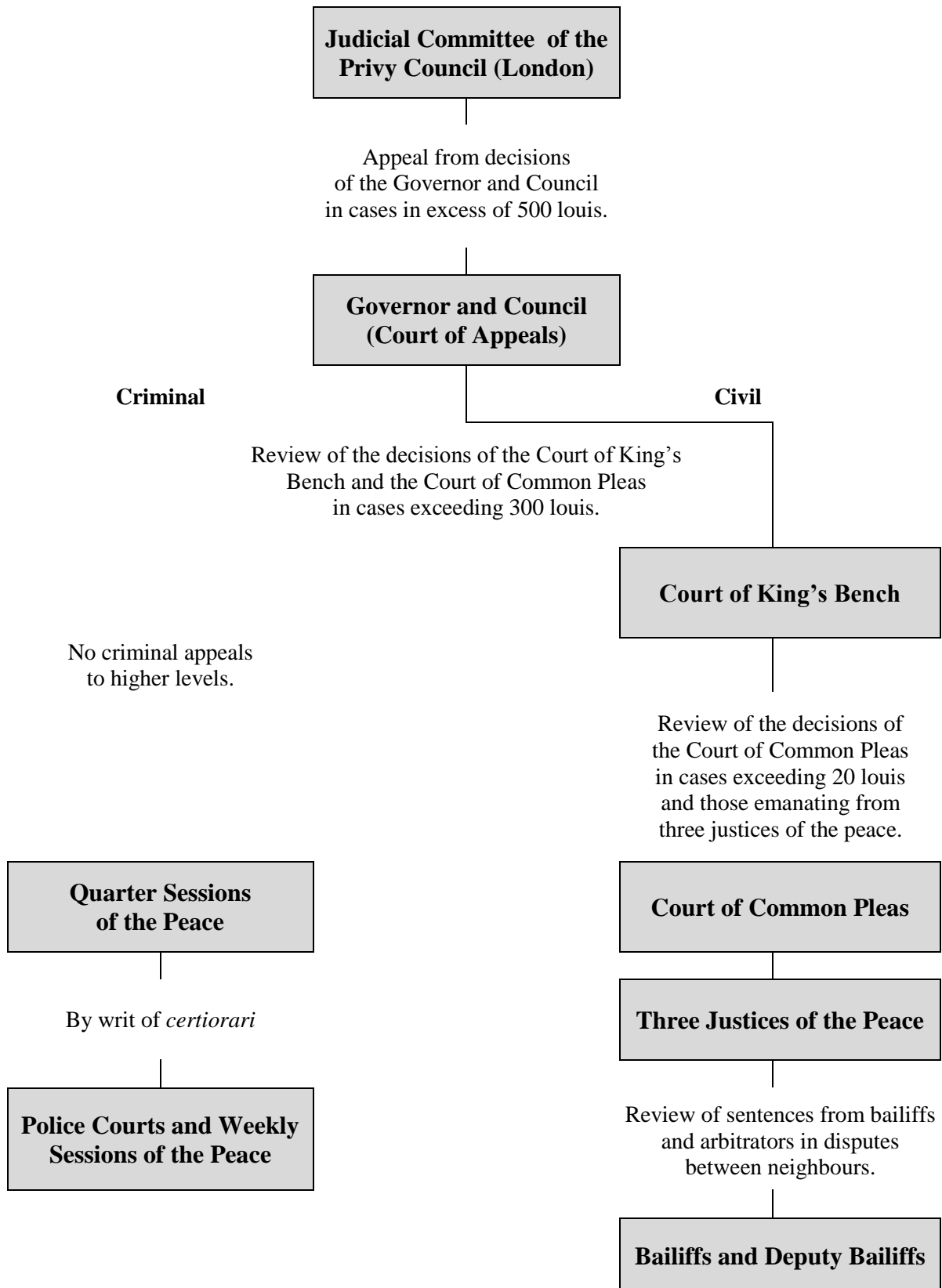
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## **A p p e n d i x 3**

### The Hierarchy of Appeals

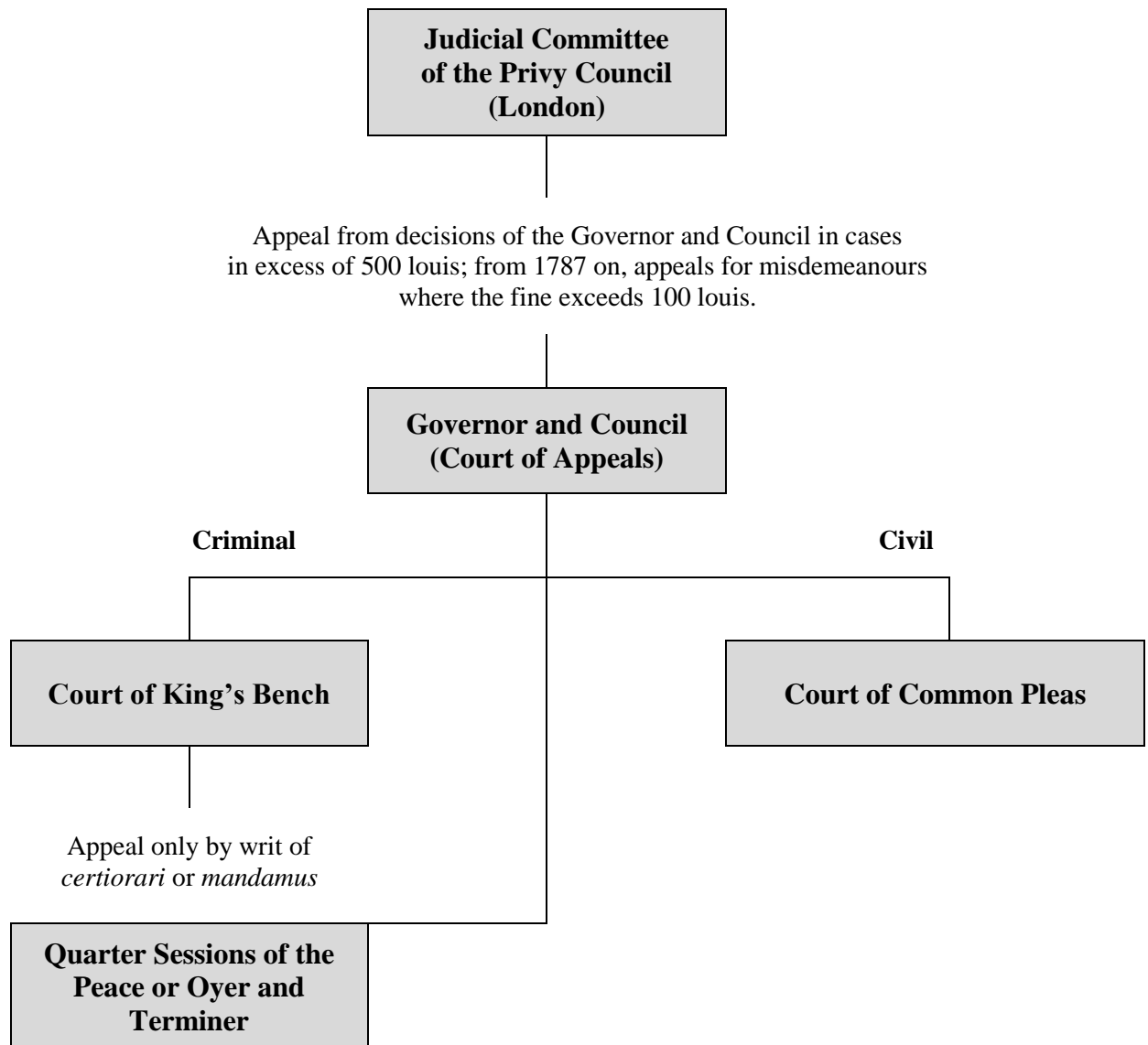
1764-1774

## THE HIERARCHY OF APPEALS



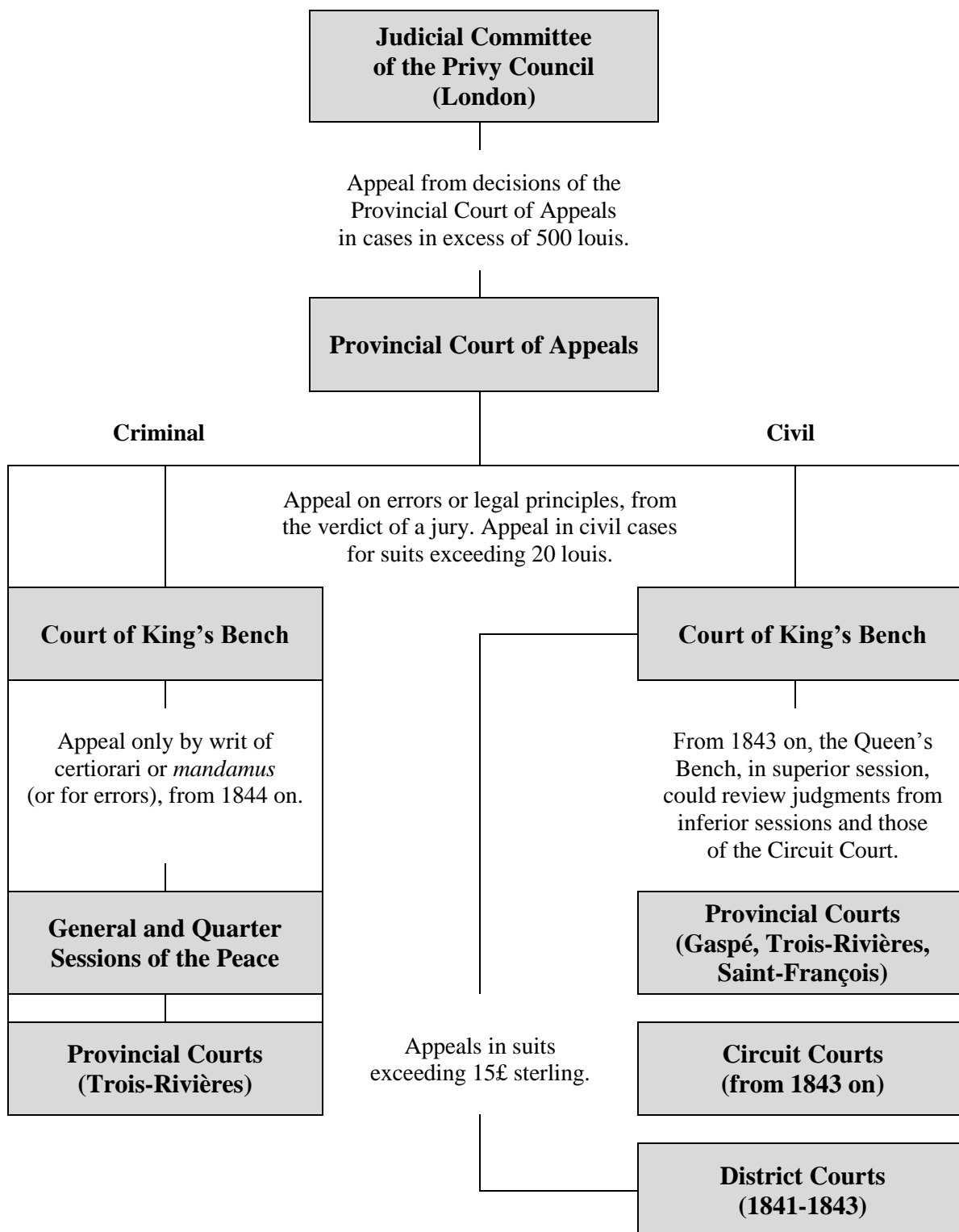
1777-1793

## THE HIERARCHY OF APPEALS



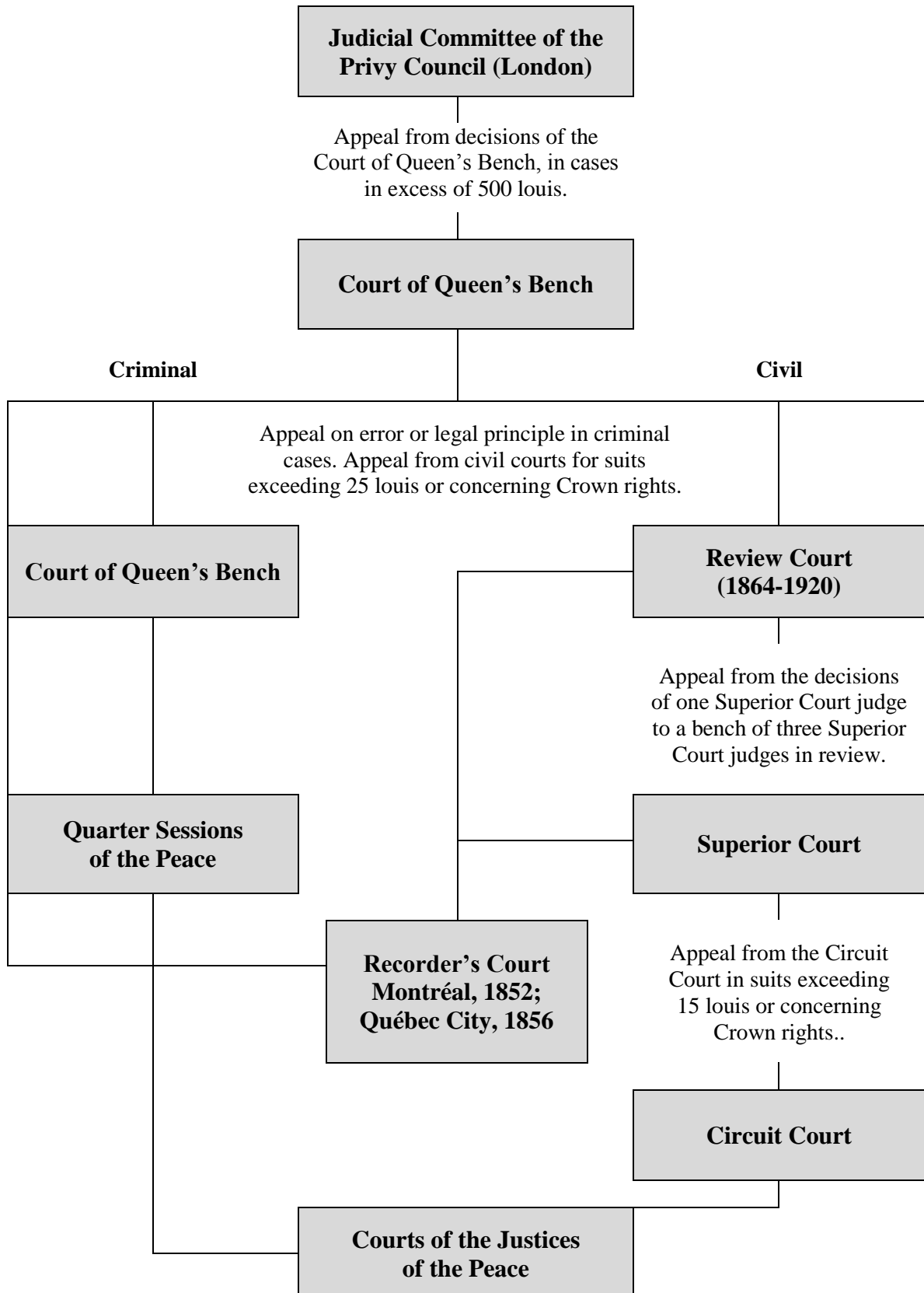
1793-1849

## THE HIERARCHY OF APPEALS



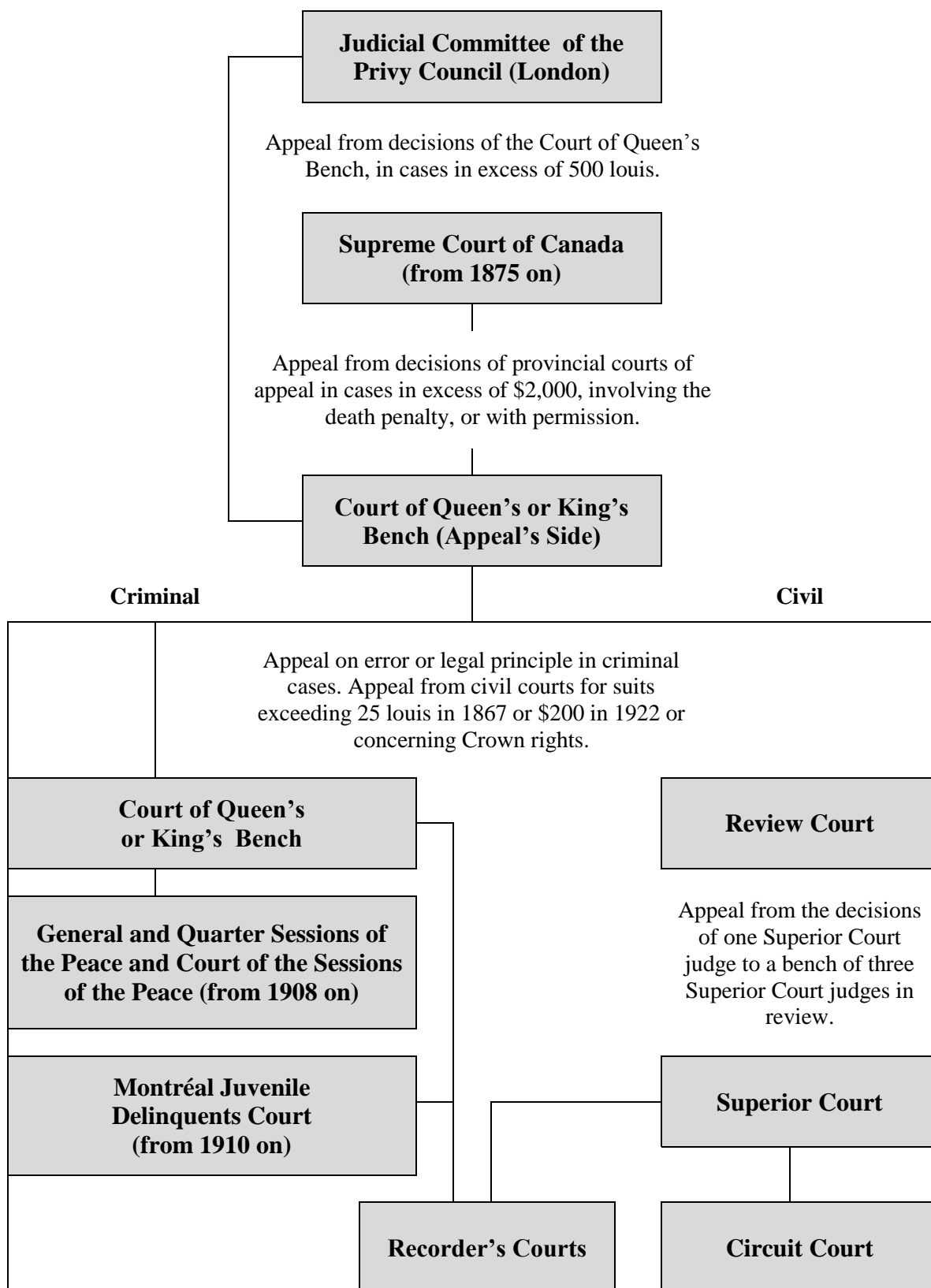


## THE HIERARCHY OF APPEALS



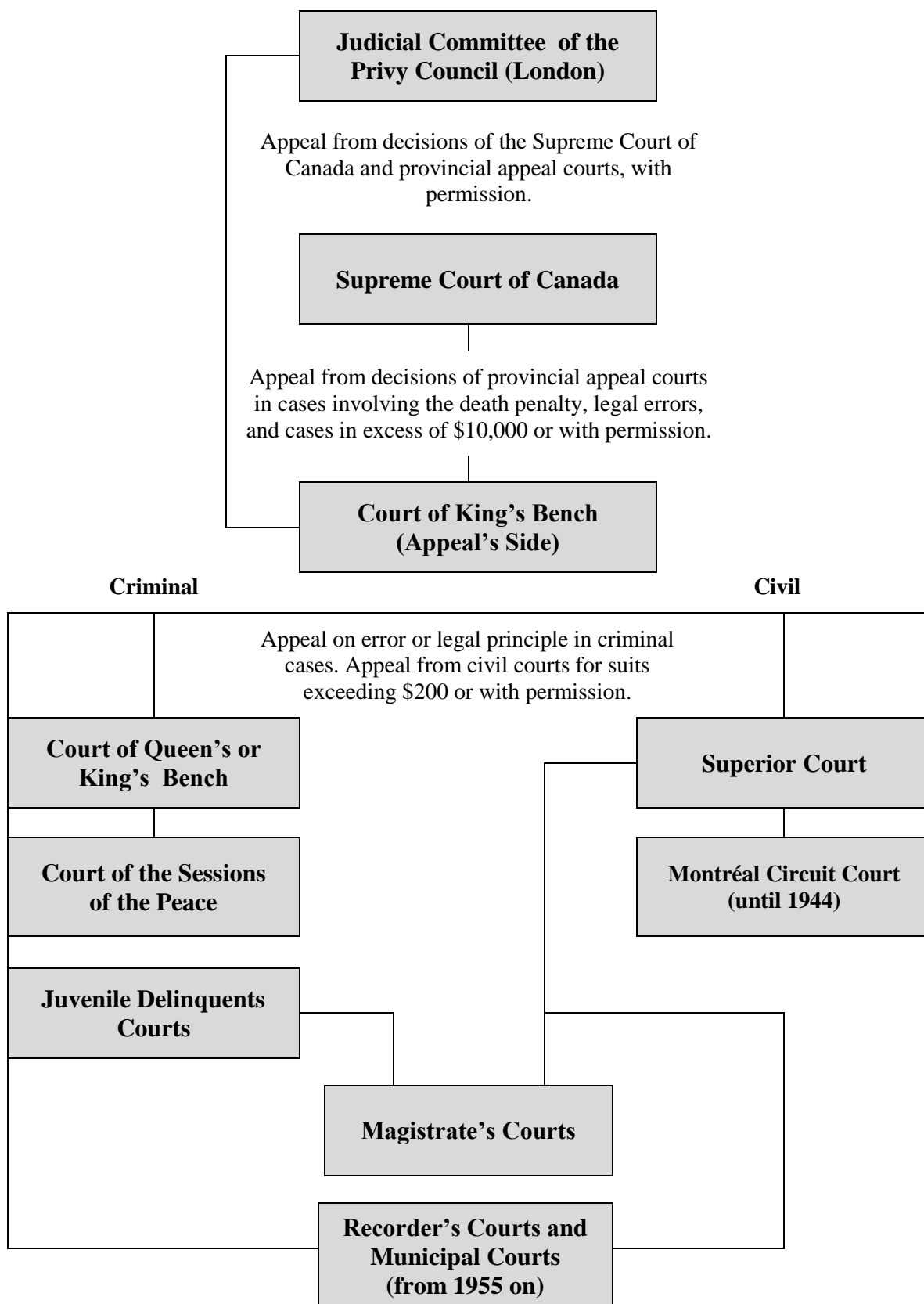
1867-1922

## THE HIERARCHY OF APPEALS



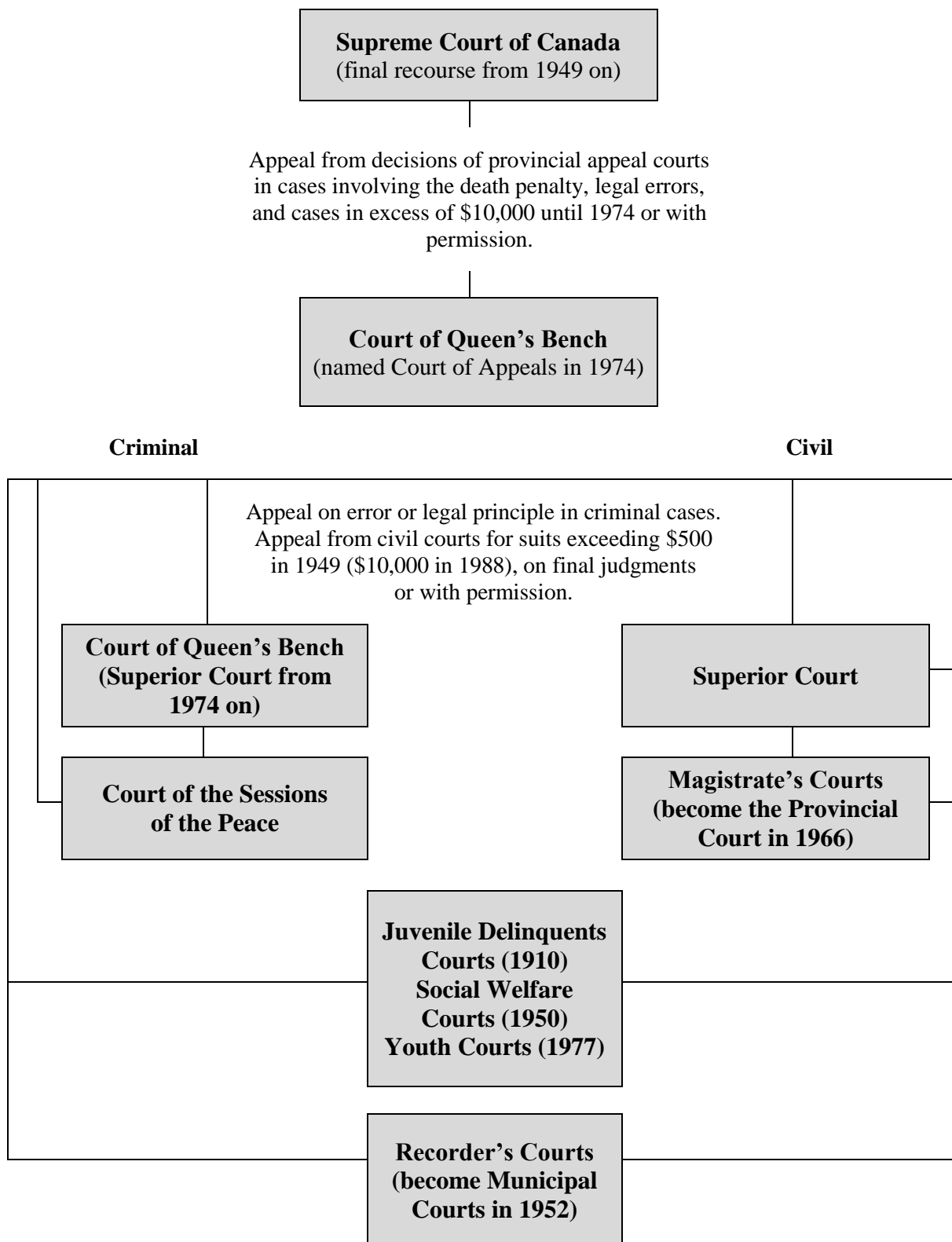
1922-1949

## THE HIERARCHY OF APPEALS



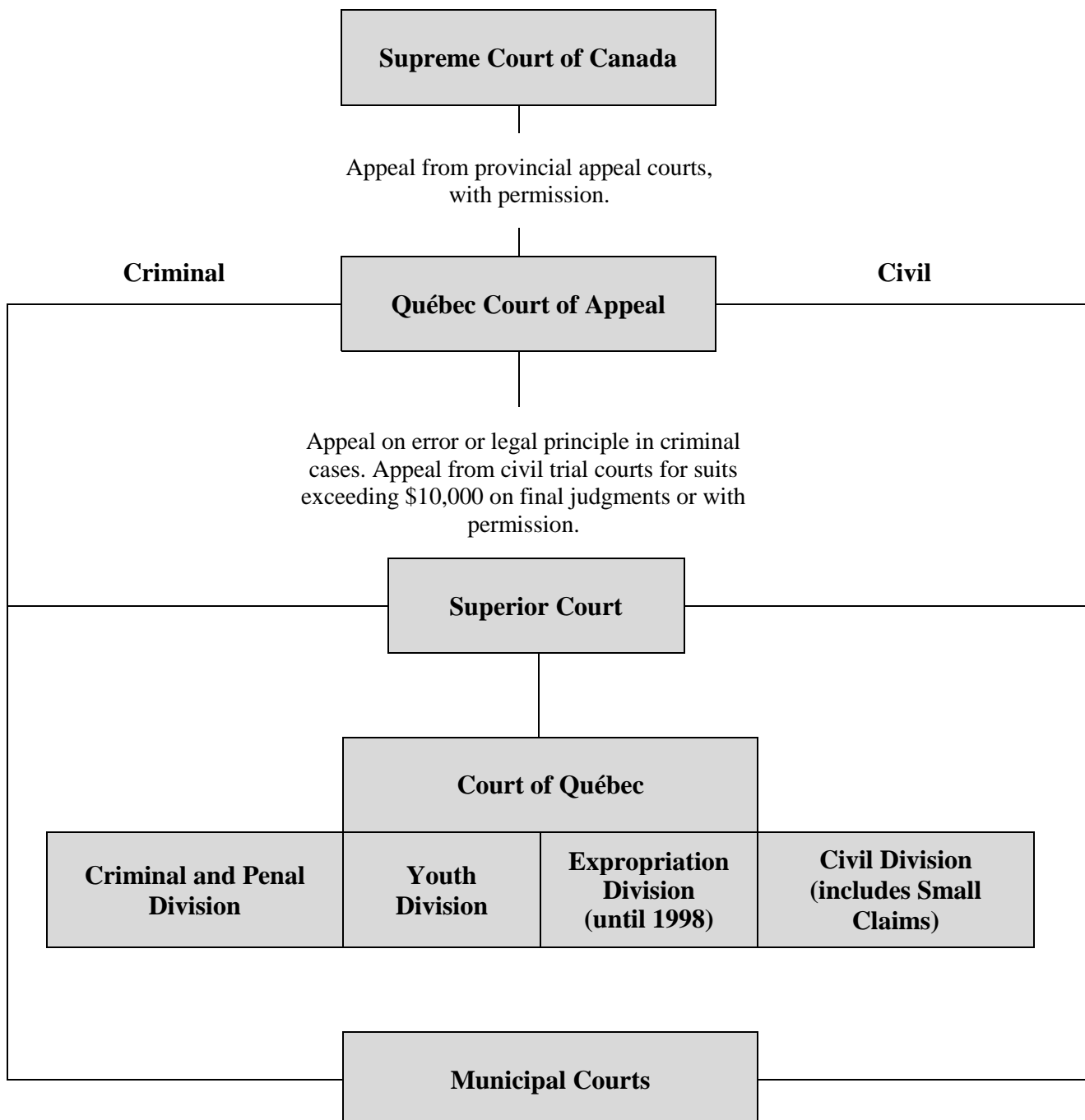
1949-1988

## THE HIERARCHY OF APPEALS



# Since 1988

## THE HIERARCHY OF APPEALS



# 4

## **A p p e n d i x 4**

### A Comparative Table on Crimes and Criminal Courts

# A comparative table

## ON CRIMES AND CRIMINAL COURTS

<b>EXCLUSIVE JURISDICTION OF THE SUPERIOR COURT</b>	<b>JOINT JURISDICTION OF THE SUPERIOR COURT AND THE COURT OF QUÉBEC (Offences tried by indictment)</b>	<b>EXCLUSIVE JURISDICTION OF THE COURT OF QUÉBEC AND CERTAIN MUNICIPAL COURTS</b>	<b>OFFENCES TRIED BY SUMMARY CONVICTIONS ON GUILTY PLEA (Court of Québec and municipal courts)</b>	<b>OFFENCES TRIED BY SUMMARY CONVICTIONS OR BY INDICTMENT (Superior Court and Court of Québec)</b>
Treason	Kidnapping, taking of hostages	Theft (excluding livestock)	Unlawful assembly, disturbing the peace	Corrupting morals, refusal to provide
Sedition	Riot, arson	Lotteries	Vagrancy	Forcible entry and detainer
Intimidation of Parliament or of a provincial legislature	Incest, corruption of minors, procuring (pimping)	Gaming and betting	Prostitution	Driving under the influence, hit and run
Piracy	Infanticide, involuntary homicide, abetting suicide	Keeping a disorderly house (brothel)	Indecent exposure, indecent phone calls, sexual interference	Assault and battery, sexual assault
Mutiny	Aggravated assault, causing bodily harm, assault with a weapon	Driving while prohibited	Cruelty to animals	Laundering the proceeds of crime
Murder	Bigamy, polygamy	Fraud	Statutory offences	Offences concerning wrecks
Attempted treason, attempted murder, etc.	Defamatory libel, hate propaganda	Possession of property obtained by crime	Offences against municipal by-laws (traffic, stray dogs, etc.)	False pretence (for less than \$1,000.00)
Corrupting public officials	Forgery, counterfeiting, extortion, false pretence (for more than \$1,000.00)	Mischief (obstruction, interruption or interference with the lawful use, enjoyment or operation of property)	Personating a peace officer or military officer by illegal use of uniforms or badges	Forgery of trade marks

**Source :** Criminal Code of Canada (R.S.C., 1985, c. C-46) and Code of Penal Procedure (chapter C-25.1).

# 5

## **A p p e n d i x 5**

### Research Strategies



# Research

## RESEARCH STRATEGIES

Requested Document	Available Information	Research Strategy
Case file	Exact date of initiation of suit Names of litigants	Use the index of litigants ( <i>index des parties</i> ) to find the case number.
	Approximate date of initiation of suit Names of litigants	Use a card-index or repertory covering the approximate range of years, if there is one. If not, go through all the indexes of litigants for the likely years.
	Date of judgment Names of litigants	Use the judgment index to obtain the case number. With this number, search the docket books going backwards from the date of judgment to find the date at which the suit was first entered in the registry.
	Name of defendant	Use the index of defendants, if one exists. If not, go through the docket books either for the exact year, if known, or for the probable range of years.
	Case number Name of one or more (but not all) litigants	Using the case number, peruse the docket books for the exact or probable range of years to find the year in which the suit was initiated.

Strategies

# Research

## RESEARCH STRATEGIES

Requested Document	Available Information	Research Strategy
Judgment	Exact date of judgment Names of litigants	Use the judgment index to find the appropriate volume and page number in the judgment book.
	Approximate date of judgment Names of litigants	Use the card index or repertory covering the approximate range of years, if there is one. If not, go through all the judgment indexes for the likely years.
	Name of defendant	Use the index of defendants, if it exists. In most cases, especially prior to the 20th century, systematically go through the column of defendants' names for all the entries in the judgment index or directly leaf through the judgment book.
	Case number Names of one or more (but not all) litigants	Use the case number to search the docket book to find the date of judgment. Then use the judgment index.
	Approximate date of initiation of suit Names of litigants	Use the card index or repertory covering the appropriate range of years, if there is one. If not, go through the index of litigants for the probable years and then refer to the docket book for the exact date of judgment. Then use the judgment index.

Strategies

# GLOSSARY

## of legal terms

<b>Acquittal</b> <i>Acquittement</i>	A setting free from the charge of an offense by verdict, sentence, or other legal process, recorded in a case file by a specific form or in a minute, or by mention in the docket book.
<b>Advisement</b> <i>Délibéré</i>	The court's deliberation after hearing the arguments but before pronouncing judgment. One might say, for example, "taking a case under advisement".
<b>Affidavit</b> <i>Déclaration sous serment</i>	A written statement of facts made before a person authorized by law to receive such statements under oath.
<b>Appearance</b> <i>Comparution</i>	The act of presenting oneself in court as a party to an action, either in person or through representation by a lawyer; appearances are mentioned in docket books and documents attesting to them can be found in case files.
<b>Appeal</b> <i>Appel</i>	A legal proceeding by which a case is brought before a higher court for review of the decision of a lower court.
<b>Attachment (or seizure)</b> <i>Saisie</i>	Procedure by which moveable or real property are taken into the hands of justice with a view to public or private (creditor) interests. An attachment can be made before judgment (in which case it is called a conservatory attachment or <i>saisie conservatoire</i> , for its object is to prevent the debtor from disposing of his goods to the detriment of his creditor), but the majority of attachments are effected after judgment (and are called seizures in execution or <i>saisies-exécutions</i> ).
<b>Attachment for rent</b> <i>Saisie-gagerie</i>	Procedure used by the proprietor or landlord, who can seize any personal property of the tenant to be found on the rented premises to repay unpaid rent. It includes the possibility of following and seizing elsewhere, even for amounts not yet due, the furniture and effects that furnish the rented premises or land, when they have been moved without consent, and this, within a period of eight days following their displacement.
<b>Bail</b> <i>Cautionnement</i>	In criminal trials, the right of an accused to release from prison before and during his trial in exchange for security given for his due appearance at said trial.
<b>Bond</b> <i>Cautionnement</i>	In civil procedure, a written surety deposited with the court when the judge accepts this type of guaranty proposed by a defendant.
<b>Conviction</b> <i>Condamnation</i>	Declaration by a judge or court clerk that the accused is guilty. Attested to in the case file by a specific form or by a minute.

<b><i>Certiorari</i></b>	From the latin “to be better informed.” A writ or order by a higher court directing a lower court, tribunal, or public authority to send the record in a given case for review, to verify the validity of proceedings. The higher court can annul or confirm the judgment of the lower court and make any decision it considers appropriate.
<b>Declaration</b> <i>Déclaration</i>	In the course of initiating a legal action, a concise explanation of the plaintiff’s complaint against the defendant.
<b>Default</b> <i>Défaut</i>	Situation of a litigant who fails to appear in court, voluntarily or not. Judgment by default: decision rendered against the non appearing, unrepresented litigant.
<b>Defendant</b> <i>Défendeur ou défenderesse</i>	The party being sued or having to respond to a plaintiff in a legal action.
<b>Ejectment</b> <i>Expulsion</i>	A judgment for ejectment ordered a bailiff to evict a tenant, to oust him physically from the rented premises in order to return them to the landlord.
<b>Election</b> <i>Avis de choix</i>	Document attesting to the choice of the accused to undergo his trial before a judge alone or before a judge and jury.
<b>Evocation</b> <i>Évocation</i>	Transfer of a hearing from the initial trial court to a higher court (not to be confused with an appeal, which occurs after judgment).
<b>Examination</b> <i>Interrogatoire</i>	Trial procedure based on asking questions of witnesses or, in the case of an examination upon articulated facts ( <i>interrogatoire sur faits et articles</i> ), based on questions asked of the litigants after the production of the defendant or the inscription of a failure to appear; a question asked during such an examination of witnesses; the written and signed reply to such questions.
<b>Execution, writ of</b> <i>Exécution, mandate d’</i>	A court order granted to put in force a judgment obtained by a plaintiff from a court. Typically, an order requiring the sheriff of the district where it must be applied to seize the property of a judgment debtor and proceed to the sale of such property in order to pay the amount of the judgment plus costs as well as the fees for the sale itself. In the case of land, the writ of <i>fieri facias</i> (“may your action be executed”; abbreviation: <i>fi. fa.</i> ) was the English legal term. The writ could also be <i>de bonis</i> or <i>de terris</i> , in other words, applied to goods or to real property.
<b>Exhibit</b> <i>Pièce à conviction</i>	Item or document produced as an element of proof during a trial, appended to another document or identified and preserved separately.
<b>Ex parte</b>	From the Latin: “without party.” A procedure or inquiry where only one party is heard; petition made by only one party.
<b>Fiat</b>	From the Latin: “let it be done.” Demand addressed to the court to issue a summons. Generally accompanied by the plaintiff’s declaration.
<b>Garnishee</b> <i>Tiers-saisi</i>	A person who has money or property in his possession, belonging to a defendant, which money or property has been attached in his hands, and he has had notice of such attachment.

<b>Habeas corpus</b>	From the Latin: “may you have the body.” A common law writ requiring a person under arrest to be brought before a court for trial. The most celebrated writs of <i>habeas corpus</i> were intended to prevent arbitrary imprisonment. This writ may also apply in civil cases, where the court inquires as to the legitimacy of the detention of one person by another.
<b>Indictment</b> <i>Acte d'accusation</i>	A formal written statement by a prosecuting authority indicating the nature of the offense with which a person is accused: necessary to initiate any trial for certain offences specified in the Criminal Code.
<b>Information</b> <i>Dénonciation et plainte</i>	An information is a formal criminal charge in which a plaintiff (usually a police officer) describes an offence, names the accused and takes an oath on the information before a justice of the peace. This is an act serving to initiate a trial.
<b>Injunction</b> <i>Injonction</i>	A court order issued by a judge requiring a person or legal entity to accomplish a specific action or abstain from it.
<b>Interlocutory</b> <i>Interlocutoire</i>	Nature of a court order or judgment rendered during the course of proceedings, upon some investigatory measure or on a deferment based on a preliminary evaluation of the core of the demand.
<b>Jury</b>	A group of jurors selected from a list of eligible citizens, sworn to deliberate on questions of fact that the court submits to them and to render a verdict on those questions. In English and Canadian law, the usual criminal jury is composed of twelve individuals. The former <b>grand jury</b> , which determined whether there was sufficient proof to proceed to trial upon an indictment (now replaced by preliminary inquiries), was made up of twenty jurors. Juries could also be used in coroner's inquests and sometimes in civil trials.
<b>Minutes of the hearing</b> <i>Procès-verbal d'audience</i>	Summary description of the proceedings in a sitting of the court, drawn up by the court clerk and indicating, for example, the witnesses called, the court orders issued, the sentence or judgment rendered, and so on.
<b>Opposition</b>	<p>In the event of seizure of real property, the action of the judgment debtor or a third party (who has an interest in the case) of opposing the seizure or the sale of the concerned property either on questions of form or substance. If the opposition is made in the delays allowed by the Code of Civil Procedure, the sheriff must suspend the sale while awaiting the court's decision on the merits of the opposition.</p> <p>There are several kinds of oppositions to the seizure of real property:</p> <ul style="list-style-type: none"> <li>- <b>to annul</b> (<i>afin d'annuler</i>): initiated by the judgment debtor or by a third party who is attempting to have the order of execution cancelled;</li> <li>- <b>to withdraw</b> (<i>afin de distraire</i>): initiated by a third party who claims a part of the real property seized as his own;</li> <li>- <b>to secure charges</b> (<i>afin de conserver</i>): initiated by a third party who wishes to preserve his own claim as a creditor on the seized real property. This opposition does not halt the sale, but allows the opposant to be paid from the product of the sale, as its name suggests.</li> </ul>

<b>Petition</b> <i>Requête</i>	Demand addressed to a judge asking him to authorize an action. A petition is usually a document used to initiate a suit in non contentious or special proceedings.
<b>Plaintiff</b> <i>Demandeur ou demanderesse</i>	The complainant or the person who initiates a suit in a civil trial.
<b>Preliminary inquiry</b> <i>Enquête préliminaire</i>	A procedure that may be used in the case of an indictable offense to determine whether the Crown has sufficient evidence to warrant committing the accused to trial.
<b>Recess (court in)</b> <i>Vacances (judiciaires)</i>	Period between the end of one judicial session and the beginning of the next session.
<b>Review</b> <i>Révision</i>	An intermediate appellate procedure existing between 1864 and 1920 in which a bench of three judges of the Superior Court reviewed a judgment rendered by a single judge of the same court.
<b>Seizure</b> <i>Saisie</i>	See “Attachment”.
<b>Seizure by garnishment</b> <i>Saisie-arrêt</i>	Procedure carried out by the creditor (garnishor or <i>saisissant</i> ) on the debtor (garnishee or <i>tiers-saisie</i> ) of his debtor (judgment debtor or <i>partie saisie</i> ).
<b>Seizure of furniture in revendication</b> <i>Saisie-revendication</i>	Procedure used by anyone who has the right to claim a moveable property in the possession of someone else (for example the owner, the custodian or the usufructuary). Writ or warrant requiring the property concerned to be held by the court until judgment on the claim has been rendered.
<b>Summary</b> <i>Sommaire</i>	Simple procedural acts (without much formality), more expeditious than usual procedures; generally used for small claims or for suits in which the judgment is not eligible for appeal.
<b>Summons</b> <i>Assignment</i>	A written notification issued by a court clerk to be served by a bailiff, requiring as a warning the defendant to appear in court at a day specified to answer to the plaintiff; act instituting court proceedings.
<b>Subpoena</b> <i>Citation à comparaître</i>	A writ commanding a person designated in it to appear in court under a penalty for failure.
<b>Trial Court</b> <i>Tribunal de première instance</i>	The court that initially hears a case.
<b>Verdict</b>	Declaration by which a jury responds, after deliberation, to questions asked by the court.
<b>Warrant (or writ)</b> <i>Mandat (or bref)</i>	A written order issued in the name of a court by a justice of the peace or other judicial officer commanding the person to whom it is directed to carry out some action specified therein. Among the most common warrants or writs can be found: <ul style="list-style-type: none"> <li>- writ of summons (<i>mandat d’assignation</i>): document summoning a party to appear before the court;</li> </ul>

- arrest warrant (*mandat d'arrestation*): document ordering the arrest of a person accused of an offense, so that he shall appear before a judge to answer to the accusation;
- search warrant (*mandat de perquisition*): document authorizing policemen to enter premises in order to search them;
- warrant for witness (*mandat d'amener*): document addressed to a gaoler ordering him to bring a prisoner before the court.

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The summary bibliography presented here offers some leads for researchers who wish to broaden their knowledge of Québec's courts and court records and is not a comprehensive bibliography on the history of courts in Québec.

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