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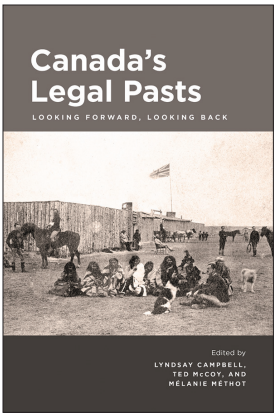

CANADA'S LEGAL PASTS: Looking Forward, Looking Back

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Family Defamation in the Quebec Civil Courts: The View from the Archives

Eric H. Reiter[*]

Introduction

In October 1912 in Montreal, Joseph Robert started defamation proceedings against Jean-Baptiste Barbeau, the brother of his deceased first wife. Robert alleged that a month earlier, Barbeau had come into his home, accompanied by one of Robert's sons from the first marriage, and said to his current wife, "I dare say there's a sore throat here, syphilis if you really want to know. . . . There wasn't anything like that in the house when my sister was alive."[1] Robert claimed the exorbitant sum of $5,000 in damages on behalf of both himself and his second wife, Hélène Brunet. About a month and a half later, in December, Barbeau filed his defence, in which he admitted going to Robert's home out of concern for his nieces still living there, but denied everything else. He also added, among other things, that if he had said anything (which he denied), it was strictly within the family, and outsiders had heard nothing of it.[2] There the matter stood until five months later, in May, when the next documents were added to the case file: a notice by Robert that he was discontinuing his case, and a judgment formally dismissing the action with costs.[3]

The case of *Robert v. Barbeau*—ordinary in many respects, unusual in others—illustrates some of the ways in which judicial archives provide a particular picture of the workings of a legal system, different from what published case reports provide. By shedding light on the procedural side of litigation, the materials contained in the judicial archives complement the substantive issues on which legal historians usually focus. They record hints about strategy and motivation, nuances that show litigants using the courts in instrumental ways. We cannot say for sure what motivated Joseph Robert to drop his case and pay the costs six months after he initiated it. But the exaggerated damages claim (in similar cases at the time the high end of the scale was between $500 and $1,000, while many plaintiffs demanded far less), the unenthusiastic pursuit of the case, and the relationship between the parties all suggest that sending a message was more important than receiving a final judicial resolution.

The case files and registers that make up the Quebec judicial archives can be read as texts in their own right, texts that shed light on the motivations and strategies of litigants. Reading archives of various kinds as texts has been the subject of numerous influential studies, and legal archives are no exception.[4] Legal archives, however, present distinct problems and promises due to the nature of the legal process that produced them. As Carolyn Strange has noted about a particular legal archive, the capital case files compiled by the Canadian government in order to determine whether or not to commute a death sentence, the archive and the files that make it up can be analyzed "not only as material artefacts but as a discursive means of organizing knowledge and producing meaning."[5] My focus is not on how the judicial archive itself structured knowledge and meaning (an interesting question outside the scope of this chapter), but instead on how the submission, recording, and archiving of documents, the literal archival remains, actualized litigants' strategies and choices within developing litigation. To this end, I will look at the case files and court registers not as completed and closed records of litigation, but rather as narratives of the development of legal actions over time. The documents in the files and the dated entries in the registers record the progress of a case: the long pauses and periodic flurries of activity reveal the ebb and flow of litigation as it proceeded. This diachronic picture of cases offers historians valuable,

and oftentimes the only evidence of the parties' commitment to the case and their reasons for pursuing it as they did.

This chapter is based on a subset of cases drawn from a larger project that sampled the Quebec judicial archives between 1840 and 1920 for cases relating to family matters. Overall, our team identified, photographed, and compiled into a database some 1,836 civil and criminal cases from the judicial districts of Montreal, Quebec City, and Trois-Rivières, at both the Superior Court (civil matters) and the Court of Queen's (King's) Bench (criminal matters).[6] Broadly speaking, the identified cases cover sexual infractions, intra-familial violence, matrimonial and parental difficulties, and conflicts concerning the patrimonial or moral status of the family. My focus here will be on the last group: cases of family defamation, that is slander, insult, and libel (Quebec law did not distinguish as the common law did) in which the victim or the defamer was a member of the plaintiff's family or in which the nature of the insult was family-related.[7] I will begin with a brief discussion of the compilation and content of the Quebec judicial archives, and then present an overview of the family defamation cases found in our sample, before offering some conclusions about the insights gained by the view from the archives.

Litigation's Archival Traces

Quebec's civil court archives—much more voluminous than the criminal side, in mass of paper produced, if not in number of cases—have been relatively underutilized by historians despite the riches they preserve.[8] The archives comprise a series of registers of all cases, along with case files containing the documents submitted to and produced by the judicial process. Compared to the published reports of decided cases, the archives present a strikingly different view of litigation, particularly with respect to defamation actions. Unlike the reports, the archives preserve the fine grain of litigation: the arguments the parties raised, factual allegations—whether or not the court accepted them in the end— and, in many cases, the words of witnesses recorded in their depositions. The archives are also much wider in scope than the fraction of cases included in the published reports of the period, which were produced for the profession, and so their editors selected for inclusion those cases that illustrated important legal points.[9]

The Quebec reports published in the period of our study unsurprisingly presented almost exclusively cases that reached formal and final judicial resolution, and more particularly those cases that made novel legal points. Incidentally, of course, the published reports also provide a wealth of information about the conflicts that drove litigants to court and the ways in which those social conflicts were legalized and resolved by the courts. The archives, however, while structured by the state and reflecting its governance priorities, were left unfiltered by the assessments of editors, by the criterion of final resolution, or even, for the most part, by the needs of the legal profession. They thus provide at least a modicum of information on every case for which proceedings were instituted, not just those that made it to judgment. Viewed from the perspective of the users of the system, the archives preserve an overview of the triggers that pushed plaintiffs over the brink of tolerance, sending them to a lawyer to get things rolling.

A case entered the archive as soon as the plaintiff instituted proceedings by asking (and paying) for the issuance of a writ summoning the defendant. (The cost was not trivial: in 1912, for example, Joseph Robert's writ and declaration cost him $10.60, which included the bailiff's fees to serve it on the defendant.) The first administrative steps in constructing the archive involved assigning the case a number, inscribing it in certain registers, and opening a file for it. This file expanded according to two forces: the requirements and deadlines imposed by law and court practice on the one hand, and the strategic decisions of the parties and their lawyers on the other. The latter is my subject here, but a brief outline of the former will be useful.

Compiling and organizing the judicial archive was the responsibility of the prothonotary (clerk of the court) of the district in question, who issued writs and received documents from the parties.[10] The prothonotary was also required to keep four registers of proceedings: a register of writs of summons (excepting subpoenas); a register of writs of execution; a register of orders, decisions, and judgments; and a *plumitif* in which was entered "a concise note of all that shall have been done in each cause."[11] The case file itself, linked by number to the registers, was to contain all procedural documents filed in the case, put into chronological order, and consecutively numbered by the prothonotary (although these last steps were not always carried out).[12]

Typically, a case that went to trial would produce at least the following documents, supported by summonses, appearances, notices, and affidavits: a writ instituting proceedings by summoning the defendant, with an attached declaration stating the plaintiff's case; a defence or plea; the plaintiff's answer to the defence; the defendant's reply to the plaintiff's answer (and sometimes further back-and-forth); any exhibits (evidence) mentioned in the parties' submissions; and an inscription for proof and hearing, indicating that all issues had been joined between the parties and the case was ready to go to trial. Alongside these basic elements, various other documents could of course be added, particularly motions that could range from simple requests for continuance to interlocutory matters raising complex legal issues. Not all cases went this far, however, as we will see. Finally, many, though not all, files included transcribed witness depositions, an invaluable resource for historians. As a general rule, witness testimony at trial was taken stenographically and, as the *Code of Civil Procedure* put it, those transcripts "constitute and shall be considered as the evidence of the witness."[13] Witnesses could also be deposed on discovery before trial, and those depositions, too, formed part of the case file.[14]

In theory, then, the registers plus the original case files gave a comprehensive chronological overview of the proceedings, and assuming they are intact, they still do. Lacunae crept into the archive, however, and created gaps. The most significant gap in many cases involved the judgment. Draft final judgments were sometimes filed, but not always. The judges submitted their drafts to the prothonotary who was responsible for transcribing them into the register of judgments,[15] but the register contained the *dispositif* only—the formal terms of judgment of the court, usually in the form "Considering that . . . ; For these reasons, the Court . . . ," and so forth. The discursive reasons for judgment that in many cases the judge read out in court were not entered into the register, and did not always make it into the case file. Printed case reports (and, for big cases, occasionally newspapers) sometimes included both, sometimes only the discursive reasons, and sometimes only the *dispositif*.[16] A good example is the case of *Mell v. Middleton*, which is discussed below. The case file includes a two-page *dispositif* of the trial judgment, which would have been entered into the register. The case was appealed, however, and by chance the respondent's factum (the document containing their arguments and other

submissions to the appellate court) transcribed in its entirety the judge's detailed eleven-page discursive reasons, which would otherwise have been absent from the file. The working of time, of course, also resulted in gaps that compromised the integrity of some case files. Parts or even whole files could be misfiled, lawyers preparing cases sometimes borrowed the originals and failed to return them, and the predations of dampness, insects, rodents, and other destructive forces led to losses as well. Occasionally the files preserve indications of the alarmingly haphazard state of contemporary archival practices, such as a voluminous 1889 Montreal Superior Court case file, which contains a slip of paper with the handwritten note "the Couillard file is on the other side at the foot of the armoire."[17]

In this way, the archive provides both an overview of the procedural steps of each case and a sense of strategic give-and-take and human decision-making that shaped the litigation over time. The files show that once the plaintiff had initiated an action and the duly-summoned defendant had formally filed an appearance, various progressions could ensue, which can be roughly grouped as follows:

- Some actions were filed, but little else was done. These cases seem to have been fairly quickly abandoned: the case file typically contains the plaintiff's declaration, the returned writ, and usually the defendant's appearance, but nothing further.
- Some actions stalled further into the process: after the defence was filed, after the plaintiff replied to the defence, or after a motion raised an interlocutory matter. Again, these cases seem to have been informally abandoned.
- Some actions were formally discontinued by the plaintiff or perempted by the defendant (which was possible after two years of inaction on the part of the plaintiff).[18]
- Some actions settled out of court, with the settlement ratified by the judge.
- Some actions went to final judgment on the merits or beyond, to appeal.[19]

The archives thus turn a flat, teleological outcome into a textured narrative that unfolded over time. Tracing the proceedings as they developed is a way to uncover the strategic choices and responses litigants made—in short, to see how plaintiffs used the court system when they felt their family name and honour were threatened. If we abandon the assumption that a final judgment was the norm—or even the goal—rather than the relatively small tip of a large litigation iceberg, we can start asking what it means that certain cases stalled, discontinued, or settled out of court. What we find is that litigation was being used for instrumental purposes, in many cases without any real expectation that the matter would reach a final judgment. Family defamation cases form a revealing subset in which to explore these issues.

Family Defamation—Intra and Extra

Among the sampled cases are sixty-eight family defamation actions (as defined above). Some cases touching defamation more obliquely were left aside, which calls for a brief explanation. First, since my focus is on how litigants responded to insults to their family, I limited the analysis to cases in which defamation was the main action, rather than an incidental or supplemental part of a more general complaint. This meant excluding cases of separation from bed and board in which "grievous insult" was one of the grounds alleged, as well as cases of alienation of affection, in which a husband sued his wife's lover and alleged injury to his honour as part of the damage claimed. In both of those types of cases, defamation was one part of a broader slate of complaints, and so it is impossible to determine the extent to which the alleged reputational injury drove the litigation or affected whatever resolution resulted from it. Second, I also excluded those defamation cases in which a wife sued for non-family-related insults directed at her personally, and in which the only family element was the participation of the husband to authorize his wife to institute the action. The defamation in those cases was individual rather than collective, and was distinct from others in which the husband sued to avenge both his own and his wife's honour.

The cases included in the analysis illustrate a range of situations. Most were actions taken by the male head of household against insults to family members, mostly to his wife, but also his children, deceased relatives, or the family name generally. Some were actions by widows on behalf of their children; one involved children suing over defamation of their elderly mother. In these cases, the plaintiff claimed damages for more than his or her personal violated honour. Typical are cases in which a husband sued for violation of both his own and his wife's honour and reputation, or in which the husband stated that he was suing on his wife's behalf since he was the guardian of her honour. Of particular interest are a group of cases in which the defamation came from within the family rather than from outside. Thirteen such cases, which I call intra-family defamation, appear among the files, a subset wholly absent from the published case reports.[20] In those cases, while the substance of the alleged defamation was not necessarily family-related, the family relationship between the parties calls for their inclusion.[21] The thirteen intra-family defamation cases are likely an undercounting, since family relationships between the parties are not always evident on the face of the record.[22] What are we to make, for example, of cases such as one in which insults were alleged to have been expressed while the defendant was visiting the plaintiff's home on New Year's Day? Was the defendant a relative? A close friend? A neighbour? Since it is impossible to specify a relationship without further digging in other sources, such cases have been classed as extra-family defamation for the time being. The idea of family is also fluid, as social historians well know, and the boundaries of "family" would differ according to whether we focus on legal, affective, or economic ties between kin—and indeed others—within a household.[23] Acknowledging that this research is a starting point only, what can we say about the litigational dynamics of family defamation cases? We can start with some statistics, with the caveat that our numbers are small (Table 1.1).

Among the sixty-eight family defamation files under study, thirteen were intra-family cases, including the *Robert v. Barbeau* case that introduced this chapter.[24] Of those thirteen cases, only one went to judgment (it was dismissed), and interestingly it featured the most tenuous family connection (tutorship rather than blood or marriage relationships). Of the others, five settled out of court, one was formally discontinued, and

Table 1.1 Outcomes of intra- and extra-family defamation cases (percentages rounded)

	INTRA-FAMILY CASES		EXTRA-FAMILY CASES	
Stalled:	6	46%	20	36%
Discontinued:	1	8%	2	4%
Settled:	5	38%	4	7%
Total of stalled, discontinued, settled:	12	92%	26	47%
Judgment for plaintiff:	0	0%	13	24%
Judgment for defendant:	1	8%	16	29%
Total of judgments:	1	8%	29	53%
Total cases:	13		55	

the others stalled, all of them early in the process (an average of thirty-nine days after the action was instituted). Two of the stalled files contain nothing after the plaintiff's declaration and the writ, two nothing after the defendant's appearance, and two nothing after the defence. In other words, only 8 percent of the small sample went to judgment, while about 92 percent were settled, discontinued, or stalled.

While the intra- and extra-family defamation cases as I have defined them are not strictly comparable, the contrast between the two groups is intriguing in several respects. I will develop some of these contrasts further below. Of the fifty-five extra-family cases, more than half went to judgment (slightly favouring defendants[25]), while less than half settled, were discontinued, or stalled. Among those that stalled, moreover, the extra-family cases stalled further along in the process. In terms of procedural stage, more than half of the extra-family cases stalled at some point after the defence was filed, while only one-third of the intra-family cases stalled at that stage. In duration, the extra-family cases stalled an average of 183 days after they were instituted, compared to thirty-nine days for the intra-family cases.

The contrast in settlement rates between the two groups of cases is particularly striking, a point I will develop below. Even if the adage "most

cases settle" is more characteristic of the contemporary Canadian legal system than the comparatively more accessible courts of this earlier period, it is noteworthy that 38 percent of the intra-family cases settled, while only 7 percent of the extra-family cases did. The case files are mostly silent on the terms of the settlements, though a few of the intra-family cases offer some information. A 1906 Quebec City case, for example, in which the plaintiff sued his brother-in-law for $150 for allegedly calling him a drunkard, a good-for-nothing, and a coward, settled for $10 six weeks after the action was instituted.[26] In an 1890 case from Yamachiche, in which the parties were the respective parents of a young couple, the plaintiffs sued for $195 over various insults, but claimed that their purpose was not to fleece the defendant but only to have their "violated reputation, character, and honour" avenged in a public way.[27] To this end, they made clear that while monetary damages would do the trick, "if the defendant preferred to make an honourable retraction to the plaintiffs at the door of the parish church of Yamachiche, after mass ended on a Sunday to be determined by the court," the plaintiffs would drop the damages claim and take costs only.[28] This was presumably what happened, since the case settled, though the final terms were left undisclosed.

Two Family Defamation Actions

Two other family defamation cases—one extra-family, the other intra-family—are worth looking at more closely. While they should not be taken as representative of a diverse set of cases, they do serve to illustrate the points about strategy and motivation that I have so far outlined in general terms only.

The first is an extra-family case from Montreal in 1902.[29] The plaintiff was Alfred Mell, whose daughter Helen was engaged to be married to Charles Arnold. The alleged defamation arose during an altercation between Arnold and his former employer, Thomas Middleton, who ran a burglar alarm and messenger service. Middleton said he had been angry after receiving an anonymous letter, which he believed to be from Arnold and the plaintiff's wife (details of the letter are sketchy, since Middleton never produced it in evidence). Laying into Arnold, with whom he already had a strained relationship, he said "he would show Mrs. Mell who she

was to talk about anybody; he said she had a different man for each of her children and that she had sold her own daughter [the aforementioned Helen] to her father."[30] Alfred Mell, as head of household, sued Middleton for $500 for the injury to the reputation, feelings, and honour of himself and his family.

Mell instituted his action right away—eleven days after the incident, one of the shortest intervals among the family defamation cases. This in itself is a strong indication of the effects of the slander on the family. Moreover, since Mell and Middleton had no prior relationship, Mell would have had little to gain and potentially much to lose in seeking to resolve the matter extra-judicially. Middleton seems to have had other ideas. At some point after the action was instituted, Arnold, his mother, and Helen had an apparently chance encounter with Middleton at a restaurant. Though details of the meeting were contested, Middleton was, according to the trial judge, "all sweetness and honey, cajolery and enticement" in trying to get the Mells to settle the case, offering to pay their costs if they dropped the suit. The offer—if indeed it had ever been made—was rejected, and Alfred Mell pursued his action expeditiously through to trial, where he produced twelve witnesses and key documentary evidence. Judgment came eight months after the action was instituted, and Justice Siméon Pagnuelo awarded Mell $200 and costs. In his judgment, Justice Pagnuelo also confirmed the Mells' honour and strongly reproached Middleton's "abominable" conduct, which he saw as gratuitously attacking the Mells, Helen in particular, in order to settle a score with Arnold. The judge condemned the slander as "most atrocious when used against honest people and altogether unprovoked." Middleton's appeal to the Court of Review, alleging excessive damages, was dismissed.[31] The damages—40 percent of the demand—were rather steep, though not unusually so, and were explained by the defendant's evident malice and mendacity.

The second example comes from Montreal in 1893 and involved two siblings squabbling over their mother's future succession (she was at the time still very much alive and residing with the plaintiff). The plaintiff, Alexandre Andegrave *dit* Champagne, claimed that his sister Octavie Andegrave *dit* Champagne and her husband Séraphin Taillefer had accused him of taking some of their mother's things. He alleged that his sister had said, before an audience of other family members, "The dishes,

where are they? The knives, where are they? The hand towels, where are they? The soap, where is it? They used to be here, now you've taken them away and kept them hidden."[32] In monetary terms this was hardly a high-stakes (pre-)succession battle, though on an emotional level nerves were plainly raw. The plaintiff also claimed the defendants had accused him of starving his mother in violation of the terms of a *donation entre vifs* by which he had undertaken to provide her with room and board. Finally, he pointed to a gratuitous insult, stating that one of them had called him "a happy cuckold" (*un cocu content*). The defendants denied making the comments about starving the mother, but admitted they might have suggested the brother was not taking the best care of her. They also denied the accusation of theft of the housewares, but said they might have casually wondered where things were. The sister countered with her own claim that the plaintiff had levelled at her a list of many of the usual insults against women during this period, calling her a bitch, sharp-tongued, a thief, a sow, and a good-for-nothing.[33] The respective allegations suggest a family spat, though we should never discount the feelings involved.

The plaintiff sued for $1,000 for having been wounded and humiliated by the defendants' words, one of the highest demands among the intra-family defamation cases. Despite the large amount of money ostensibly in play, the action meandered along in a leisurely fashion—this was no scorched-earth flurry of motions and counter-motions. The better part of a year elapsed between the alleged insult and the filing of the action. The time limit for bringing a defamation case was one year counting from knowledge of the insult, so the plaintiff was well within that deadline, but many other plaintiffs hustled to a lawyer and fired off an action within weeks, sometimes even days like Alfred Mell did, so the slow pace here is noteworthy. Once instituted, the action itself lasted more than 500 days—almost a year and a half. This included close to six months before the plaintiff responded to the defence, and almost a year before he had the case inscribed on the roll for hearing. At the hearing, after the plaintiff had deposed eight witnesses (the last of whom was the defendant husband), but before the defendants began presenting their case, the plaintiff withdrew his action and the case settled, even later than on the proverbial courthouse steps. The file includes the terms whereby the parties would pay their own costs, but "upon declaration by the defendants that they

never intended to violate the honour of the plaintiff or his spouse . . . , having always considered them to be honest and respectable."[34] And with that the file closed, a conciliatory ending indeed, if the terms of the settlement were in fact carried out.[35]

Conclusions

What conclusions does this view from the archives allow us to draw about family defamation litigation? What can we learn about litigants' motivations, strategies, and goals as they went to court to protect or avenge their family honour? The two groups of family defamation cases each involved threats to the honour of the family and its members, some originating from outside the family, others from inside. In some ways they reveal similar concerns at work, but in other ways they are strikingly different from one another.

The extra-family defamation cases show clear urgency about repelling the threat to the family. Plaintiffs tended to resort relatively promptly to formal law, with the time between the incident and institution of proceedings being on average about half that of the intra-family cases. This was followed in most cases, as we have seen, by vigorous pursuit of the action, carrying it to judgment or, if not that far, then at least deep into proceedings. Several factors might explain this general profile of extra-family defamation litigation. First, the absence of close affective relationships in most cases would make plaintiffs less hesitant to adopt impersonal means of dealing with the threat to honour, by taking the conflict to the courts rather than trying face-to-face negotiation. In most cases we do not know what went on before institution of proceedings, but the short delay in many extra-family cases would have left little time for serious informal dispute resolution. Second, as in all moral injury cases, while the monetary demands were effectively punitive rather than compensatory, plaintiffs were generally realistic in their punitive expectations. Amounts demanded were high, but not excessively so (despite what defendants like Thomas Middleton said). Judges in successful actions rarely awarded the whole claim, but they did often award a quarter or a third of it, provided that the initial demand was not outrageous. This degree of restraint by many plaintiffs, coupled with their commitment to pursue the case to the

end, suggests that plaintiffs in the extra-family cases were actually looking to make the defendant pay. Third, alongside the punitive goals, moral redress was also a factor. Without a relationship to heal, public vindication became more important to counter slander or injurious falsehoods from neighbours, employers, or the press. Judges at the time had a keen sense of honour and the boundaries of propriety, and they tended to see it as self-evident that it was a compensable injury to call someone's spouse "a damned disgusting streetwalker, a cow, a sow, a bitch" (to cite just one example from a successful action).[36] Plaintiffs who could make a reasonable case without exaggeration stood to receive a judgment that was a public acknowledgement of the family's honour and the defendant's transgression. All this suggests that in the extra-family cases, family honour was a vital asset to be protected vigorously.

Turning to the intra-family cases, we find some of these same characteristics but some important differences as well. In those cases, public vindication was again evidently a key goal, as we see for example in the terms of settlement in the Andegrave *dit* Champagne affair and in the case of the insulting in-laws from Yamachiche. But public vindication had its limits—the desultory pursuit of many of these cases suggests that the point was less the outcome than the process, and public vindication seems often to have taken a back seat to private pressure within an ongoing relationship. Other differences reflect similar concerns. First, the amounts demanded in some of these cases were outlandishly excessive, far more than any court would ever award, and the parties' lawyers would certainly have made known to them the unlikelihood of receiving more than a tiny fraction of such huge amounts. The average demand in the intra-family cases was more than twice that of the extra-family cases ($1,107 compared to $490), while the medians were closer ($450 and $275 respectively). This difference is explained by the presence of a number of astronomical claims at the top end of the intra-family cases, such as Joseph Robert's $5,000 demand or several others over $1,000, amounts more akin to what defamed politicians demanded from newspapers at the time. Rather than a realistic claim for compensation, these amounts were rhetorical (and emotional) positions designed to underscore the severity of the situation. Second, the actions within families took about twice as long as extra-family cases to come to court, suggesting less urgency to proceed and perhaps the

exploration of informal means of redress before resorting to the courts when those failed. Finally, as already mentioned, the much higher rate of settled, stalled, and discontinued cases, as well as the failure in any of those cases to proceed much beyond the initial salvo commencing the litigation, further indicate that instituting proceedings was the point, not bringing them to a prompt and public formal resolution. As mentioned, judges tended to be sympathetic to reasonable plaintiffs, making it even more striking that almost none of the intra-family cases were pursued to judgment. In most of those cases, however, judgment was likely never the point. Intra-family defamation litigation was symbolic: it was less about mulcting relatives for their intemperate remarks, than about rhetorically chastising people with whom one would usually have to resume some kind of ongoing relationship. Plaintiffs, fed up with their relatives' conduct, sought the threat of judicial authority to bring them into line and restore some semblance of family harmony. Rather than repelling a threat to family honour from outside, those cases were about making a point to difficult relatives, or about escalating private internal family conflicts that had crossed lines of tolerance. Dragging one's insulting sister or uncle or nephew into court, forcing them to retain counsel and to address allegations made against them, and in general making them suffer the financial and emotional toll of litigation, at least for a short while, was a powerful way to express displeasure, presumably after more personal means had gone nowhere. This was often enough to make one's point, and indeed settling a case or declining to carry it forward might have salvaged a relationship (if that was desired), when pursuing the case to judgment and a damages award would have destroyed it irreparably.

This picture of the procedural life of litigation has little to do with the substantive legal arguments raised and adjudicated in the cases; it comes from reading the registers and case files that make up the judicial archives as texts in their own right, rather than simply as repositories of information. As Mariana Valverde has argued, legal case files are different from those produced in other disciplines such as psychiatry: "legal cases are specific problems or conflicts, as documented and presented by authorized parties in very specific formats. Legal formats are designed not to build up knowledge for the sake of knowing . . . but rather to generate a highly formatted resolution."[37] The material in legal case files, as we have

seen, was compiled and archived for purposes mandated by the legal process, but it was also in large part produced with explicitly argumentative and strategic aims in mind. In other words, it reflected not reality but rather opposed argumentative positions about a highly contested reality. The archival case file is more than an encapsulation of a conflict, however. It is also a record of the development of a litigation over time, a diachronic picture of a developing process rather than a static product. As such, the documents a case file preserves provide valuable insights into the parties' motivations, degree of commitment, and emotional engagement with their conflict.

NOTES

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1 Robert et ux v Barbeau, [1912] no. 2500 (Sup. Ct. Montreal), cont. 1987–10–014/1126, SSS1, SS2, S2, TP11, Bibliothèque et Archives nationales du Québec—Vieux-Montréal (BAnQ, V-M), Bref et déclaration (filed 25 October 1912), 1: "J'oserais dire qu'il y a ici-dedans . . . un mal de gorge, la syphilis, si vous voulez le savoir. . . . Il n'y a jamais eu de ça dans la maison du temps de ma défunte sœur."

2 Robert et ux v Barbeau, Défense du défendeur (filed 5 December 1912), 1–2.

3 Robert et ux v Barbeau, Désistement (15 May 1913); Jugement renvoyant action du demandeur avec dépens suivant désistement (16 May 1913, Justice Charles Archer).

4 Important works include Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1977); Carolyn Steedman, *Dust: The Archive and Cultural History* (New Brunswick, NJ: Rutgers University Press, 2002); Antoinette Burton, ed., *Archive Stories: Facts, Fictions and the Writing of History* (Durham, NC; Duke University Press, 2005); Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2009). On legal case files in particular, see Carolyn Strange, "Stories of Their Lives: The Historian and the Capital Case File," in *On the Case: Explorations in Social History*, ed. Franca Iacovetta and Wendy Mitchinson (Toronto: University of Toronto Press, 1998) and Mariana Valverde's contributions to "On the Case: Explorations in Social History: A Roundtable Discussion," *Canadian Historical Review* 81 (2000): 272–78.

5 Strange, "Stories of Their Lives," 33.

6 Among the civil cases, the sampling rate varied according to the volume of cases in each district. At Trois-Rivières and Quebec City, one year in ten during the period was sampled, and five percent of files were selected within those years. At Montreal, the much larger volume, particularly in the twentieth century, necessitated a reduced sampling rate of 2.5 percent of files. This information is provided by Peter Gossage, "Familles, droit et justice au Québec, 1840–1920: aperçu global et bilan provisoire," paper presented at the Séminaire CIÉQ-CERHIO, Angers, France, 19–20 May 2016.

7 Surprisingly little has been published on defamation in Quebec. See André Lachance, "Une étude de mentalité: les injures verbales au Canada au XVIII^{e} siècle (1712–1748)," *Revue d'histoire de l'Amérique française* 31 (1977): 229–38; Joseph Kary, "The Constitutionalization of Quebec Libel Law, 1848–2004," *Osgoode Hall Law Journal* 42 (2004): 229–70; Ollivier Hubert, "Injures verbales et langage de l'honneur en Nouvelle-France," in *Une histoire de la politesse au Québec: normes et déviances, XVII^{e}–XX^{e} siècles*, ed. Laurent Turcot and Thierry Nootens (Quebec City: Septentrion, 2015). For our period outside Quebec, see Rosemary J. Coombe, "Contesting the Self: Negotiating Subjectivities in Nineteenth-Century Ontario Defamation Trials," *Studies in Law, Politics and Society* 11 (1991): 3–40; Andrew King, "Constructing Gender: Sexual Slander in Nineteenth-Century America," *Law and History Review* 13 (1995): 63–110; S.M. Waddams, *Sexual Slander in Nineteenth-Century England: Defamation in the Ecclesiastical Courts, 1815–1855* (Toronto: University of Toronto Press, 2000); Lisa R. Pruitt, "'On the Chastity of Women All Property in the World Depends': Injury from Sexual Slander in the Nineteenth Century," *Indiana Law Journal* 78 (2003): 965–1018.

8 For most of the period covered by this project (after the earliest years), Quebec's civil courts comprised principally the Circuit Court (the lowest level of trial court), the Superior Court, and, for appeals, the Court of Queen's (King's) Bench. This chapter focuses on the Superior Court, the main trial court of general civil jurisdiction.

9 Raymonde Crête, Sylvio Normand, and Thomas Copeland, "Law Reporting in Nineteenth-Century Quebec," *Journal of Legal History* 16 (1995): 147–71.

10 What follows draws on the applicable laws and regulations, in particular the *Code of Civil Procedure* (*CCP*) and the *Rules of Practice of the Superior Court* (*Sup. Ct. Rules*). The period of this project, 1840 to 1920, saw significant changes to this legislative framework, especially the initial codification of civil procedure in 1867 and several fundamental revisions of the *CCP* subsequently. This overview is based on the state of the rules circa 1900, as set out in R. Stanley Weir, ed., *The Code of Civil Procedure of the Province of Quebec* (Montreal: C. Théoret, 1900), which includes the *Sup. Ct. Rules*. See also Jean-Maurice Brisson, *La formation d'un droit mixte: l'évolution de la procédure civile de 1774–1867* (Montreal: Thémis, 1986) and Evelyn Kolish, *Guide des archives judiciaires* (Quebec City: Bibliothèque et Archives nationales, rev. ed. and online 2017), 27–28.

11 *Sup. Ct. Rules*, rules 18–20.

12 *Sup. Ct. Rules*, rule 22.

13 *CCP*, arts. 345 and 350 (quotation). This had been introduced as an option for the parties in 1871 (SQ 1871, c 6, ss 10–11): the rule was strengthened in 1884, so that in the

main judicial districts the judge or either party could require it (SQ 1884, c 8, s 4), and broadened further in 1890 to include most courts in the province (SQ 1890, c 46).

14 *CCP*, art. 288.

15 *CCP*, art. 544.

16 Crête, Normand, and Copeland, "Law Reporting," 161–62.

17 Couillard v Jeannotte, [1889] no. 1912 (Sup. Ct. Montreal), BAnQ-VM, TP11, S2, SS2, SSS1, cont. 1987–05–007/2301, "Le dossier de Couillard est vis-à-vis au pied de l'armoire."

18 *CCP*, arts. 275–78 (discontinuance) and 279–85 (peremption).

19 Until 1920, a first level of review was available before three judges of the Superior Court sitting as a Court of Review (*CCP*, arts. 1189ff). For those who were still unsatisfied with the review judgment and who had the means to pursue the matter, a further appeal could be brought to the Court of Queen's (King's) Bench (*CCP*, arts. 1209ff).

20 An exhaustive search of published case reports turned up, unsurprisingly, large numbers of defamation cases, many of which involved insults directed at family members, but none in which it was clear that the defendant was a relative of the plaintiff. I thank Julie Perrone for undertaking most of this search.

21 An example is Théoret v Letang, [1896] no. 1400 (Sup. Ct. Montreal), BAnQ-VM, TP11, S2, SS2, SSS1, cont. 1987–05–007/2988, in which a notary sued his uncle for allegedly casting aspersions on his practice and professional abilities. "Ordinary" defamation cases like this were excluded from the extra-family list, since those cases had nothing to do with family.

22 Not all of the case files include depositions, which sometimes reveal relationships between the parties that are otherwise hidden. Genealogical research might shed further light on relationships, but is beyond the scope of this chapter.

23 On the "elasticity" of Quebec families and households, see Sherry Olson and Patricia A. Thornton, *Peopling the North American City: Montreal 1840–1900* (Montreal: McGill-Queen's University Press, 2011), 214–42.

24 Two of the cases are tentatively included because the parties have the same surname, though the file does not permit further precision about their relationship. I have also included one case involving a tutorship relationship (akin to guardianship in the common law) and five cases involving in-laws.

25 Judgments for defendants include one case of peremption by the defendant under *CCP* 279, the effect of which was to enter a judgment dismissing the suit.

26 Hamel v Buteau, [1906] no. 1700 (Sup. Ct. Quebec City), BAnQ-Québec [BAnQ-Q], TP11, S1, SS2, SSS1, cont. 1960–01–353/1016, Bref d'assignation et déclaration (filed 6 November 1906), 1: "d'ivrogne, de vaurien, de lâche et autres appellations semblables."

27 Bellemare et ux v Bellemare, [1890] no. 216 (Sup. Ct. Trois-Rivières), BAnQ-Trois-Rivières [BAnQ-TR], TP11, S3, SS2, SSS1, cont. 1983–11–001/120, Bref et déclaration (filed 27 August 1890), 2: "venger leur réputation, leur caractère et leur honneur outragés par une réparation publique."

28 Bellemare et ux v Bellemare, Bref et déclaration, 2–3: "si mieux n'aime le dit Défendeur faire réparation d'honneur au dit Demandeur et à la dite Demanderesse, à la porte de l'Eglise de la Paroisse de Yamachiche, le dimanche, à l'issue du service divin du matin, à la date fixée par cette Honorable Cour, et dans ce cas à ne payer que les frais des présentes."

29 Mell v Middleton, [1902] no. 1880 (Sup. Ct. and Sup. Ct. Rev. Montreal), BAnQ-VM, TP11, S2, SS2, SSS1, cont. 1987–05–007/2172.

30 The plaintiff's factum in review consists mostly of a transcription of the judge's discursive reasons for judgment, from which this and the following quotations are taken. Mell v Middleton, Factum du demandeur (filed 11 December 1902).

31 The review judgment was simply a printed form dismissing the appeal: Mell v Middleton, Jugement rendu en révision (Sup. Ct. Rev., 31 March 1903, Loranger, Archibald, St-Pierre JJ.). Unusually, however, the file contains the draft rough notes of one of the review judges (likely Justice Archibald since they are in English), which indicate that this one justice at least strongly agreed with the findings of the trial judge.

32 Andegrave dit Champagne v Andegrave dit Champagne et vir, [1893] no. 600 (Sup. Ct. Montreal), BAnQ-VM, TP11, S2, SS2, SSS1, cont. 1987–05–007/2761, Bref et déclaration (filed 21 April 1893), 2: "'La vaisselle, où est-elle? les couteaux, où sont-ils? les essuie-mains, où sont-ils? le savon, où est-il? il y en avait, vous l'avez soustrait, caché, gardé'."

33 Andegrave dit Champagne v Andegrave dit Champagne et vir, Défenses de la défenderesse (filed 5 May 1893), 3: "la traitant de salope, de mauvaise langue, de voleuse, de truie, de vaut-rien etc."

34 Andegrave dit Champagne v Andegrave dit Champagne et vir, Procédés à l'enquête et mérite (filed 5 October 1894), 1: "Le demandeur retire son action, chaque partie payant ses frais sur déclaration des défendeurs qu'ils n'ont jamais entendus [*sic*] attenter à l'honneur du demandeur et de son épouse Dame Philomine Gohier, les ayant toujours considéré[s] pour honnêtes et respectables. Parties mise[s] hors de cour."

35 It is worth pointing out that while this action closed, there may have been other actions between these same parties, a far from rare occurrence, but something we have not yet been able to trace.

36 Thomas v Robinson, [1904] no. 2540 (Sup. Ct. Montreal), BAnQ-VM, TP11, S2, SS2, SSS1, cont. 1987–05–007/1829, Bref et déclaration (filed 1 August 1904), 1: "maudite écœurante, traîneuse de rue, vache, truie, salope."

37 Valverde in "On the Case," 270.