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Canada's Legal Pasts: Looking Forward, Looking Back

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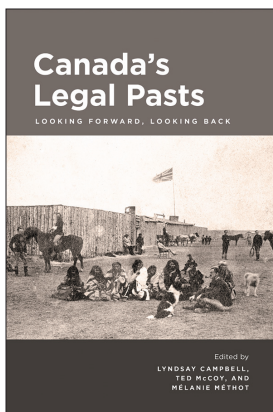
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**CANADA'S LEGAL PASTS:
Looking Forward, Looking Back**
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Analyzing Bigamy Cases without Going to the Archives: It is Possible

Mélanie Méthot

After nearly thirty years in the field, I still feel my heart racing when my fingers touch old yellowed court documents. Sometimes filled with spidery scrawls, these documents often reveal the waved-like calligraphy of a person who spent his life (for most of the eighteenth, nineteenth, and early twentieth centuries, court employees were men) transcribing countless items of precious information. And what to say about the times I realize I am the first researcher to peruse those centennial documents, not yet unfolded or unstapled, requiring the delicate touch of the historian? Leafing through archival material is definitively exhilarating. I am thankful, however, for the technological advances of the twenty-first century. It took me years to read through microfilmed newspapers during my doctoral research: I can only wonder how many times my tired eyes skipped over valuable information. Now researching the prosecution of bigamy in both Canada and in Australia, I again use archival data and newspapers but I retrieve the data differently.

Digitalization has revolutionized the way we conduct research. One can now read from the comfort of one's home any issue of *The Globe* (from 1844) or the *Toronto Star* (from 1894), to name only two important Canadian newspapers. Historians can sometimes search historical newspapers databases by keywords, such as *Peel's Prairie Provinces* which has a modest holding of newspapers from the region (<http://peel.library>.

ualberta.ca/newspapers/), while Bibliothèque et Archives nationales du Québec [BANQ], which holds a substantial number of magazines and newspapers searchable online, cannot always be investigated by keywords (<http://numerique.banq.qc.ca/ressources/details/RJQ>). As for Library and Archives Canada, it will perhaps follow the Australian path and digitize every newspaper in its possession.¹ Until our public institutions invest in this technology, we can check diverse online archives to access freely rich historical data. Institutions constantly add to their holdings and refine their digital tools, although, as Donald Fyson pointed out many years ago about Early Canadiana Online (now canadiana.ca), a digital historical library holds “ultimately (a) selective collection of the primary sources.”² Carolyn Strange made the same argument even earlier about archival court documents, warning legal historians that it was the keepers of court records who decided what each *case file*³ would contain.⁴ Regardless of the kind of research we do, we have to remind ourselves constantly how we often have access to only some of the information, something easily forgotten when a new piece of the puzzle emerges.

The slenderness of the case files produced in bigamy prosecutions—when these files exist at all—often leads to frustration. For instance, when I encountered on the pages of a Montreal prison’s ledger Philomène Déry who was serving a term of five months of hard labour for bigamy,⁵ I did not locate any corresponding court documents related to her case. I remember my excitement when I came across newspaper articles providing some of the missing information. At least three Montreal newspapers mentioned the case. I even found out who informed the authorities: a priest, as the *Montreal Star* reported.⁶ I chose the Déry case to introduce one of my recent publications on “Marriage Norms and Bigamy in Canada.”⁷ Too happy to have found more details on the case, I had forgotten to take into account the nature of the source disclosing the information. In 1870, the *Montreal Star* was a very sensationalist paper. The four historians working on the “Famille, Droit et Justice au Québec, 1840–1920” project discovered the Déry court file.⁸ According to their documents, Déry’s illegitimate husband was the one who lodged the complaint. This example serves as a good reminder to always place the sources we use in their historical context. Considering today’s concerns about “fake news,” one may ask if historians should rely on newspaper accounts to get accurate facts. My

research on bigamy in Australia reveals that Australian newspapers have had a real appetite for everything that deals with the offence; specific cases could easily be mentioned in dozens of articles, even more. For instance, the Lily May Strike case was reported in forty-three articles. However, details about the case vary greatly from one article to the other, sometimes contradicting each other. As Lyndsay Campbell discusses in her piece on pamphlets in this volume, “learning to sift the facts from the slant” is “[o]ne of the great challenges and joys of history.” Campbell also mentions how one can glean the discourses of the time on specific issues. Historical newspapers are definitely worth turning to in order to find some details on criminal cases, which can then be verified through other types of sources such as civil records and court files. Analyzing the articles as narratives, not only for what they include or leave out, but for their tone also serves to shed light on society.

Let me turn to a specific example to illustrate how one can go about doing legal history research without spending much time at the archives (although I highly recommend going to any archives!). Just as with Philomène Déry, I first encountered Julie Morin on the pages of a prison ledger. I leafed through the massive, red Quebec City gaol register,⁹ although one can search some of the registries online, in the database of the BANQ, between 1813–1866 for men and up to 1899 for women. It is possible to search by family or given name, country or ethnic origin, date of imprisonment, offence, sentence or grounds for discharge (http://www.banq.qc.ca/archives/genealogie_histoire_familiale/ressources/bd/instr_prisons/prisonniers/index.html). Morin was jailed briefly twice: on 12 November 1879, before she pleaded not guilty, and on 28 April 1880, the night before her trial. I was able to locate a very slim case file containing four documents related to her preliminary inquiry: (1) the testimony of Édouard Robitaille confirming he was the legal husband of Julie Morin, (2) the testimony of Reverend James Sexton who celebrated the union between the Widow Morin and William Russell in 1877, (3), papers providing information about the two individuals who posted her bail, and (4) a writ of assignment. In sum, beyond the names of the two husbands, the names of two witnesses confirming Morin was Robitaille’s legal wife, the identity of the two men who posted bail, the dates of the two marriages, and the dates of the court proceedings, the file disclosed nothing on any

informant, motivations, or outcome. Fortunately, dates mentioned in these documents and those from the prison ledger allowed me to narrow further my research to Quebec City newspapers, which yielded a total of twenty-four articles from six different papers. Some papers followed every step of the legal procedure, from the first accusation, through the postponement of trial, to the actual trial and verdict, while others chimed in at intervals. All six papers covered the April 1880 trial, a few reporting the examinations, cross- and re-cross examinations of some of the fourteen witnesses. No single paper covered the trial exhaustively. From these accounts, I could somewhat reconstruct the trial—at the very least establish who participated in it—and ascertain the defense’s strategy and the newspapers’ different outlooks.

The Morning Chronicle devoted space to the judge’s explanation of the nature of the offence:

That crime is committed by those who being married contract another marriage while their first wife or their first husband is still living. To constitute this offence, proof must be adduced of the first marriage, and that, at the time of the celebration of the second marriage, of which also proof must be produced, the first wife, or the first husband, as the case may be, was still alive.¹⁰

The inclusion of the judge’s explanation in the newspaper cited above suggests that the common citizen would not have known much about the nature of the offence. It also seems that the Crown assigned one specific function to each of its witnesses. For instance, Father Sexton had to prove that the two marriages took place, something he did easily. He damaged the Crown’s case, however, when he testified that “[h]e did not put any questions to the prisoner before marrying her because she was recognized by the people of St-Roch as widow of Robitaille who had been prayed for some years previously as dead in St-Roch’s Church”: evidently, he and the neighbours believed Morin a widow.¹¹ Charles Fitzpatrick, a young criminal lawyer who later became Chief Justice of Canada and lieutenant-governor of Quebec, organized Morin’s defense around two main pieces of evidence. He opened with an official record of the circuit court dated from

1873 in which the prisoner was a party in an unrelated suit and was styled, “Julie Morin, widow of Édouard Robitaille.” The document had established the legal recognition of Morin as a widow. Fitzpatrick concluded his case with another document, an 1871 letter received by Morin and seen by Robitaille’s father stating that Édouard Robitaille had died after receiving the last sacraments of the Church and had made the author of the letter, a co-worker, promise to inform his wife of his death.

Without great surprise, all the newspapers announced the following day that Julie Morin had been acquitted. The Canadian law on bigamy provided exceptions such as “any person marrying a second time whose husband or wife has been continually absent from such a person for the space of seven years then last past, and was not known by such person to be living within that time.”¹² The jury deliberated less than ten minutes. The newspapers portrayed Fitzpatrick as a much better lawyer than the Crown prosecutor who only produced five witnesses, one of whom even turned out to be a powerful ally for Morin’s cause. By contrast, Fitzpatrick brought nine people to vouch for the defendant and adopted the astute strategy of starting and finishing his case with documents. Regardless of the sincerity of witnesses, in a court of law tangible documents often weigh more heavily than personal recollections.

I could have stopped the research there, but instead my curiosity was awakened by some of the testimonies of the witnesses, especially the niece of the illegitimate husband, Ellen Russell. She had mentioned how her uncle had made a will making her the sole heir, but had subsequently modified it to the benefit of his wife. I checked Canadian censuses (<http://www.bac-lac.gc.ca/eng/census/Pages/census.aspx>), trying to understand what happened to the main actors of the saga. I found a Julie Russell, a widow living with her sister in 1881, 1891, and 1901. I was also able to check online the 1877 marriage contract between William Russell and Morin, as well as the different wills Russell had executed (<http://bibnum2.banq.qc.ca/bna/notaires/index.html>). One can also consult the parish registries online to find out details about marriages (<http://bibnum2.banq.qc.ca/bna/ecivil/>). In the United States, and I suspect in many other countries, genealogical websites are some of the most visited. As such, private companies are developing great tools to conduct genealogical research; for instance, without having to subscribe to them, one can navigate through

the Church of Jesus Christ of Latter-day Saints' FamilySearch database for free (<https://www.familysearch.org/>). These databases allow researchers to find more personal information about the people involved in their case studies.

From newspapers to genealogical searches, I decided to do what any respectable twenty-first century individual would do: I googled "Julie Morin" and "Bigamy." With great excitement, I found the *Queen's Bench Reports* and discovered that Russell's niece contested the validity of his last will, which opened up a completely new avenue for this intriguing case.¹³ In the end, historical research is about ingenuity, curiosity, and open minds. No one should hesitate to use the ever-growing online resources, archival or not, and everyone should remember to situate the sources in their historical context.

NOTES

- 1 As its website states, TROVE "helps you find and use resources relating to Australia. It is more than a search engine. Trove brings together content from libraries, museums, archives, repositories and other research and collecting organisations big and small": <https://trove.nla.gov.au/general/about>. Searching with keywords such as "bigamy" or "bigamists," I get more than 100,000 hits. My research team has already identified nearly eight hundred cases by going through the Trove database. Furthermore, under the direction of Mark Finnane at Griffith University, *The Prosecution Project*, which is investigating the history of the criminal trial in Australia and digitizing the registers of all courts, provided a preliminary lists of bigamy trials: <https://prosecutionproject.griffith.edu.au/>. Interestingly, there are very few discrepancies between the accused bigamists of the PP data set and my data retrieved from TROVE.
- 2 Donald Fyson, "À la recherche de l'histoire dans les bibliothèques numériques: les leçons de *Notre mémoire en ligne*," *Érudit* 59, no. 1-2 (été/automne 2005): 95-113.
- 3 A case file is a dossier that encloses some or all documents used by the court to assess the guilt or innocence of a defendant. It may contain the information/complaint, crown solicitor correspondence, subpoena, bail, recognizance to give evidence, police reports, personal letters, list of exhibits, exhibits, depositions, and very rarely judgments.
- 4 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), 29.
- 5 Prison registries 1870, #478, SS1, S1, E17, Centre d'archives de Montréal, BANQ Montréal.
- 6 "A Romish Clergyman Lodged the Information," *Montreal Star*, 23 February 1870.

- 7 Méthot, "Finding the Ordinary in the Extraordinary: Marriage Norms and Bigamy in Canada," in *Marriage, Law and Modernity: Global Histories*, ed. Julia Moses (London: Bloomsbury Academic, 2017).
- 8 Donald Fyson, Peter Gossage, Thierry Nootens, and Eric Reiter. Eric Reiter's chapter in this volume reflects his work on this project.
- 9 A jail (formerly "gaol") was a local lock-up for short sentences and pre-trial detention, which duration was usually no more than three months. The term "prison" is generally used to refer to a penitentiary. The penitentiary is an invention of the late eighteenth century, aimed at the reform of the offender and normally providing for both solitary and congregated confinement. The labour of inmates could be employed to financially support penitentiaries. In these institutions, generally larger than jails, sentences tended to be longer. As the nineteenth century unfolded, penitentiaries came to gradually replace other corporal methods of punishment (whipping, stocks, banishment, and so forth).
- 10 "Court of Queen's Bench – Crown Side," *Morning Chronicle* (Quebec), 28 April 1880.
- 11 "Court of Queen's Bench – Crown Side," *Morning Chronicle* (Quebec), 29 April 1880.
- 12 *An Act Respecting Offences against the Person*, SC 1869, c 20, s 58, available on <http://eco.canadiana.ca/>.
- 13 I am currently writing a monograph on the Morin-Russell saga.

