

Our Courthouses – For Whom and By Whom?

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I. MY COURTHOUSE IS CONTROLLED BY MY CHIEF ADVERSARY

The Montréal Courthouse located at One Notre Dame Street East in historic old Montréal is my courthouse. It is where I went to watch trials as a student and was inspired to become a lawyer. It is where I argued my first case and where I spend a great deal of my time today.

The Montréal Courthouse is a seventeen storey monolithic building constructed in 1971. There are no columns at the entrance or wood panelling in the courtrooms. Two entire sides of the building are made of windowless cement. The building casts a shadow and blocks light. I have never heard a lawyer, judge or litigant say they are inspired upon entering the building.

I consider the Montréal Courthouse to be an eyesore in the heart of the old city. While virtually every other building in the area resonates with historic references, the Courthouse is a towering cement block. The neighbouring MacDonald's occupies a nicer building.

The Montréal Courthouse is built in the Brutalist style, in which cement figures prominently.¹ Kafka could not have imagined a building better designed to make the individual feel small and insignificant—in contrast with *The Law*, which is huge, static and impenetrable.

This is how Jacob Larsen, a local blogger on the urban landscape, describes his experience of the Montréal Courthouse:

Leaving City Hall one blisteringly cold day in January, I realized the entire east wall of the Québec Superior Court building is windowless. I'm no architectural snob, but brutalism of this

¹ The term “brutalism” is from the French “béton brut” meaning “raw concrete.” Architects and Université de Montréal professors Jean-Claude Marsan and Alan Knight note that the 1971 Montréal Courthouse is a manifestation of Premier Jean Lesage’s “Masters in Our Own Home” (“Maîtres Chez Nous”) philosophy. See Jean-Claude Marsan and Alan Knight, “Le Patrimoine en question,” online: (1983) 20 *Continuité* 21–25 <<http://id.erudit.org/iderudit/18255ac>>.

magnitude needs to be pointed out and scorned with all our collective energy.²

The main entrance to the Courthouse is on the third floor. In the corner, there is a brick on which the following is inscribed:

MONTRÉAL COURT HOUSE
INAUGURATED ON SEPTEMBER 8TH 1971
ROBERT BOURASSA, PREMIER
BERNARD PINARD, MINISTER OF PUBLIC WORKS
JÉROME CHOQUETTE, MINISTER OF JUSTICE.³

After this, the names of the architects and general contractor appear.

A decade ago, I was involved in a case in which M^{re} Jérôme Choquette, then a lawyer in private practice, was acting as counsel. In the morning, when I walked by the inscription, I could not help but wonder whether the cards were stacked against my client and me. After all, opposing counsel laid the brick that serves as the foundation for the entire Courthouse. I like to think of myself as a “reasonable, right-minded and well-informed person,”⁴ and I had fleeting doubts about the fairness of the system.

If I had concerns in 2002, I cannot imagine how lawyers and litigants with cases against the Attorney General of Québec felt from 1970 to 1975, when M^{re} Choquette was the provincial Minister of Justice and Attorney General of Québec.

² For a lively discussion about the two large cement walls of the Montréal Courthouse, see Jacob Larsen, “Justice may be blind but this is going too far!” (4 February 2009), online: Spacing Montréal <<http://spacingmontreal.ca/2009/02/04/justice-may-be-blind-but-this-is-going-too-far>>. This source mentions some supporters of the walls who cite similarities with the blank United Nations wall in New York and the audacity of such walls. “It’s quite an act of will to leave a facade blank like this. A fitting echo of the force of law? Must all buildings appear as friendly and transparent?”

³ Original sign is in French.

⁴ *Valente v The Queen*, [1985] 2 S.C.R. 673, 24 D.L.R. (4th) 161 is the perspective from which the Supreme Court of Canada tells us we should approach questions of individual and institutional bias in the judiciary.

The inscription does not inspire confidence in the fairness of the court system. Along with the building, it leaves one with the feeling that the scales of justice are tilted in favour of the government and its agents—that the government may do as it pleases and act with impunity because it runs the courts. This may not be so, and such a message was surely not the intent of the provincial government in 1971 when the Montréal Courthouse was inaugurated. However, the impression is indelible and unfortunate.⁵

The current arrangement by which the executive, in the person of the provincial Minister of Justice and Attorney General, administers the legal system and manages courthouses does not make sense. In 1992, then Chief Justice of the Ontario Court of Justice, Frank Woods Callaghan, summarized the absurdity of the situation as follows:

Incredibly, we have left it up to the province's chief litigant, the attorney general and his ministry, to prepare a budget for the courts in which his counsel appears daily. Once funds are allocated to his ministry, the attorney general then earmarks funds among competing concerns falling within his responsibility, only one of which is court administration.

We sometimes forget that the attorney general, as well as holding our purse strings, and hiring and firing our staff, is also the main litigant in the courts in whose administration he seeks more and more control. Just think how often the attorney general is your opponent in a civil case, in an administrative law matter, in a constitutional challenge, in every criminal case.

Should your opponent control your court system? Should your opponent decide the balance between civil case resources and criminal case resources? Should your opponent direct and hire and fire the staff of the courts in which you fight him? Should

⁵ In fact, the current system in which the executive administers the court system is neither long established, nor the result of deliberate decision-making, but rather the result of a historical happenstance. See Carl Barr *et al.*, *Alternative Models of Court Administration* (Ottawa: Canadian Judicial Council, 2006) 24–28, online: Canadian Judicial Council <http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_Alternative_en.pdf>.

your cases be decided by judges who are forced, increasingly, into an economic and administrative dependence on your opponent?⁶

An impressive number of studies, reports and academic articles call for a move away from the executive-model of court administration for constitutional reasons.⁷ The argument is convincing. If the judiciary is an important and independent branch of government whose mandate, among other things, is to ensure that the executive and legislative branches enact laws that respect the *Constitution Act*⁸ and the *Charter*,⁹ the executive cannot control or appear to control the judiciary.

In Québec, there have been several unbecoming clashes between the executive and the judiciary over matters relating to the administration and management of courthouses. The result was litigation about the presence of ushers in courtrooms, judges' power to maintain their secretaries in their positions, and the price that judges pay for parking at the Courthouse.¹⁰ Members of the public apprised of this litigation cannot help but wonder what on earth is going on: judges are suing the government over resources they want in their courtrooms, and it is in these same courtrooms that the issues will be decided, by judges.

This is the perspective from which I want to approach the issue of the administration of the court system—that of a person of modest means without any specialized knowledge of the legal system who walks through the front door of the Montréal Courthouse.

It is usually assumed that such a person is an unrepresented litigant (in demand or in defence). However, they may also be a witness

⁶ Then Chief Justice Frank Woods Callaghan, "The Financing and Administration of the Courts: A Threat to Justice" (1992) 11 *Advocates' Soc J* 3 at 5.

⁷ See, for example: "Alternative Models of Court Administration" *supra* note 5; (Ottawa, Ontario: September 2006); Then Chief Justice Jules Deschênes, "Masters in Their Own House: A Study on the Independent Judicial Administration of the Courts" (Ottawa: Canadian Judicial Council, 1981); "The Financing and Administration of the Courts: A Threat to Justice," *supra* note 6.

⁸ *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3.

⁹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

¹⁰ *Shatilla v Shatilla*, [1982] QC CA 511, *Gold v Attorney General of Quebec*, [1986] RJQ 2924 (SC), *Poirier v Québec*, [1994] RJQ 2299 (SC) and *Bisson v Québec*, [1993] RJQ 2581 (SC).

or a member of the public whose life has been affected by a legal matter. Most Québeckers have their first encounter with the Montréal Courthouse when they go there on a simple errand: to obtain a certified copy of a decision, file annual forms in a financial matter, to testify for an acquaintance or in relation to their employment.

They are often left with the impression that the system is broken and that the Montréal Courthouse is just another government building, no different from the buildings that house the Ministry of Natural Resources or the Québec Revenue Agency. A myriad of small details contributes to the overall perception.

A. DEPOSITION OF GOVERNMENT BUREAUCRATS

Several years ago, I was representing a client who was suing a provincial ministry. We decided to summon certain government bureaucrats for depositions. Following the usual practice, the depositions were held at the office of the deponents' lawyers.

In Montréal, the offices of the lawyers for the provincial Attorney General and Minister of Justice are located on the ninth floor of the Courthouse. They were representing the defendant ministry in our case.

My clients felt that this did not bode well for them. Before the depositions, we met at the Courthouse cafeteria where we usually met before hearings. Thus, they were left with the impression that the Montréal Courthouse was the government's turf and that obtaining a fair hearing there would be difficult.

B. CONSULTATION ROOMS

In another, more recent case against a government agency, opposing counsel and I were often in court to set dates for procedural matters and ask for extensions of delays. One day, a judge suspended our case and asked us to consult our respective agendas and clients, and then return with possible dates for the deposition of a third party. My colleague and I left the courtroom to do so but found things cumbersome in the hallway. Cell phone reception was bad, we were both juggling dozens of file folders and there were no cubicles available. In the circumstances, we agreed to go upstairs to her office to call our clients and coordinate our schedules. There would be desks and landlines

available there. My colleague did everything possible to allow me to speak with my client in private, but the situation was rife with problems and malaise. It felt wrong to call my client from my opponent's office and he didn't react well when his call display showed that I was calling from the Attorney General's office.

In the circumstances, it is understandable and inevitable that many people are left with the feeling that one cannot have their fair day in court when the opposing party is a government agency.

II. OBSTACLES TO JUSTICE AT MY COURT HOUSE

There are also real obstacles to access to justice at the Montréal Courthouse. I do not want to provide a laundry list of complaints with no constructive suggestions. Criticizing the status quo is easy and there are many dedicated judges, clerks and court personnel who go out of their way to accommodate members of the public grappling with legal problems at the Montréal Courthouse. Unfortunately, there is only so much they can do given the system in which they are working and over which they have so little control.

A. PHOTOCOPIES

Except for family matters, it costs \$3.10 per page to obtain copies of judgments and other documents in the court record. The delay is two days and there are no rush orders. The consequences of this situation are far-reaching and nefarious.

In one of my first tenancy cases, my client claimed that she was the victim of harassment by her landlord. It was going to be a difficult claim to prove. As is usually the case with harassment, there were no witnesses to her landlord's extreme behaviour and it was hard to believe that a landlord could act so badly. My client insisted that her landlord had physically threatened her when she was late with the rent and that she was not the first victim of his behaviour. My client urged me to check whether her landlord had a criminal record. Two days before the hearing, I went down to the Montréal Courthouse and did so.

I found that there was a pending case against the landlord and copies of the police report were in the file. The landlord was accused of

uttering death threats against a pregnant tenant who was late with the rent and confining her against her will. I could not believe my eyes.

I asked the person at the counter to make copies of the police report, knowing full well that Legal Aid probably would not reimburse the disbursement because it had not been pre-approved. Nonetheless, if I were to serve my client's interests properly, I needed a copy of the report before going to the tenancy board.

I was informed that volume was high and that the photocopies would be ready in three working days, when I would have to come back to the Courthouse, in person, to pick them up. I tried to plead my case, but I was told that there were no exceptions.

B. LOST PEOPLE

Almost every time I am at the Courthouse, someone approaches me, often with proceedings in hand, and asks where they should go. It is not always possible to help them. The room in which their motion is presentable may be indicated on the last page of the proceedings, but there is no guarantee that the matter is being heard in that room because adjudication of motions is usually transferred to another room, sometimes on another floor.

Sometimes, I try to help the lost people in the Montréal Courthouse. Other times, I watch them approach security guards and clerks for guidance. I cannot help but wonder how often judgments are rendered, by default, against these people as they flit about the Courthouse. Judges and clerks do their best to summon parties over the speaker system before rendering judgments by default, but it is not always possible to do so.

The situation is troubling: if a party to a case is actually in the courthouse, they should be heard.

Surely, technology can help in this regard. Examples of effective ways to ensure that people are not lost in large public buildings abound. At airports, screens provide updates on arrivals and departures, and gate changes appear regularly. In hospitals, there are volunteers and/or phones that visitors can pick up to locate a patient's room in seconds. I am confident that something similar can be established at the Montréal Courthouse. Currently, there is one information desk staffed by one

person in the entire building, and he is often unable to provide useful information to the public.

C. PHOTOCOPY MACHINES

There are seventeen floors of the Montréal Courthouse. On the first floor, there is a photocopier machine that attorneys can use. On the seventeenth floor there are several more machines in the Bar library. There is only one machine that the public can use. It is tucked away on the second floor and accepts only coins.

This is nonsensical. Every day hundreds of people at the Montréal Courthouse draft hand-written settlement documents, complete forms for the determination of child support and make modifications to such documents after fruitful negotiations with the opposing party. They are often unable to make copies of the documents they sign and file with the Court. There are more photocopier machines available to the public in most malls than at the Montréal Courthouse.

D. CONSULTATION ROOMS

There are three court rooms in which new cases and practice matters are presentable at the Montréal Courthouse: room 2.06 (the provincial court), room 2.16 (Superior Court, civil matters), and room 2.17 (Superior Court, family matters). On any given day, between 65 and 150 cases are on the roll in each room. A hearing date in one of these rooms is often the first time that the parties are brought into direct contact with one another.

The special clerks sitting in rooms 2.06, 2.16 and 2.17 often encourage the parties who appear before them to speak to one another and try to resolve their issue without the Court's intervention.

Every instance of direct contact between parties is an opportunity to settle and research shows that most conflicts can be resolved by direct negotiations.¹¹ Settlements save the parties and the court time and money.

¹¹ The Hague Institute for the Internationalisation of Law (HiIL), *HiIL Trend Report – Part 1: Towards Basic Justice Care for Everyone* (The Hague: HiIL, 2012) online:

Hence, a courthouse that encourages such contact is in the best interests of everyone involved.

Yet, on the second floor of the Montréal Courthouse, where rooms 2.06, 2.16 and 2.17 are located, there are only ten consultation rooms available for the up to 300 parties whose cases are presentable on any given day. Thus, parties and their attorneys often try to negotiate settlements and the modalities of interim measures in the hallway or at the Courthouse cafeteria.

E. COPIES OF DECISIONS

Despite the challenges, the system often works and orders are issued by the courts of Québec that safeguard people's rights and ensure that they are protected by the law.

But, after appropriate and fair substantive justice is meted out in a courtroom, the procedures for obtaining proof thereof are unclear and cumbersome. I have pled motions after which a clerk has agreed to fax a copy of the Court's decision to my office on the same day. In other instances, it has taken over a week to obtain a copy of an order rendered in an urgent matter. Often, it is thanks to a helpful judge's assistant that my office has succeeded in obtaining certified copies of judgments or orders when time is of the essence.

The consequences of such delays can be far-reaching. Without proof of their nomination, a liquidator cannot secure the assets of an estate and there is an opportunity for mischief. Likewise, a parent needs a certified true copy of a decision authorizing her to travel internationally with her child before their date of departure in order for that decision to have any real meaning.

In 2012, with technology at our disposal, we can surely devise mechanisms to expedite the process by which parties are given certified copies of orders.

III. THE ARCHITECTURE OF JUSTICE

When I was asked to produce this paper and participate in the Canadian Institute for the Administration of Justice's "The Architecture of Justice" conference, Ms Beth Symes OC suggested that I begin by thinking about courthouses and what I think they should look like. In doing so, I inevitably came up with the critique of the Montréal Courthouse that appears above. Then, I turned my mind to what a courthouse *ought* to look like. This is what I imagined.

It is a place that feels like a public building in the best sense of the term. The soul is slightly elevated upon entering and one feels lucky to be part of a society in which one can access such a building. This is the feeling that I had when I entered the New York City Public Library for the first time. I could not believe that I was allowed to walk into such a building without paying, sit down, begin reading books and use a computer with internet access simply because I was a person visiting New York City. I had access to the rich patrimony of America and one of its premiere city's archives through this great public institution.

My ideal courthouse is easy to navigate. There are several information desks, staffed by friendly and knowledgeable people who can point members of the public in the right direction. There are staff available who come out from behind the counter and walk people to their destination. These people could be law students who learn about how the law works in practice, as they help members of the public do the same.

When the average person of modest means without specialized legal knowledge enters my ideal courthouse with a clear and reasonable mission (obtaining a certified copy of a judgment, sitting in on a trial that has piqued their interest, or obtaining a writ of execution following a favourable decision in Small Claims Court), they are able to accomplish that mission with a reasonable delay and at a reasonable cost. If the person is an unrepresented litigant, they will be able to find the right courtroom, obtain copies of documents they need to understand their case and sit down with the opposing party to explore settlement possibilities in a calm, quiet place.

Judges, litigants and members of the public all feel at ease calling this imagined courthouse 'my' courthouse because it belongs to all of them.

IV. WAYS OF ENTERING A COURT ROOM

The centerpiece of a courthouse is its courtrooms. This is where the real action occurs.

A courtroom can be entered by one of two doors: the one by which the judge and personnel enter, and the one by which the public, often represented by members of the Bar, enters. I am concerned with how things look from the perspective of the latter.

No doubt, solutions to the problems set out in this paper are neither straightforward nor easy. Management of any large organization is multi-faceted. However, I am convinced that we can move towards practical solutions by looking at courthouses from the point of view of its end-users.

The need for judges' input in court administration has generally been recognized. However, the need for input from members of the public has been given less attention, though it is equally important. In our legal system, judges produce justice, but they do not do so as an end unto itself. They do so for the public.

In a courtroom, the real players are the public and the judiciary. They walk through opposing doors and meet in the middle where law is made. It follows that these two players should have a serious say in how courthouses are run.

And when one walks in off the street and into the Montréal Courthouse, there should be some indication that one has entered an important building with a constitutional mandate to protect people's rights.

My city is replete with public monuments and inscriptions that inspire. At the foot of Mount Royal, Montréal's great public space, stands the George Étienne Cartier monument upon which the following is etched:

Canada must be a country of freedom and all freedoms must be protected by the law.¹²

¹² The original French reads as follows: "Le Canada doit être un pays de liberté et toutes les libertés doivent être protégées par la loi." It is a quote by Jacques Cartier. On the other side of the monument, the following quote, also by Cartier, appears:

On my way home from walking on the mountain, I often pause at the monument. When I have time to read the inscription, I do, and invariably feel happy to live in a modern, law-based, civil society and feel part of it.

I would like to read something akin to this upon entering my courthouse and be similarly inspired, if only for a brief moment, before getting on with the business at hand and heading into a courtroom with my client.

“We are of different races, not for strife, but to work together for the common welfare.”