“Séparez-vous donc!”: Marital Breakdown, Legal Patriarchy, and Women’s Agency in Montreal, 1866-1916

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Abstract

"Séparez-vous donc!": Marital Breakdown, Legal Patriarchy, and Women's Agency in Montreal, 1866-1916

Julia Vrentas

This thesis provides an in-depth examination of the process of separation of bed and board in Montreal between 1866 and 1916 based on 121 cases from the Superior Court of Quebec for the Montreal Judicial District. Women were the overwhelming majority of the plaintiffs who filed, most frequently on the grounds of their husband's abuse, alcoholism, and failure to provide. Even though the 1866 Civil Code of Lower Canada deemed married women as legally incapacitated figures, they *were* allowed to request separation of bed and board. However, they had to overcome many obstacles to do so, which reveals the tensions of structure and agency at the core of my analysis. Separation of bed and board also acted as a way for individuals to protect their individual and/or family honour, which reveals the emotional aspect behind proceeding with a formal trial. I will also analyze the minority of cases initiated by men in order to compare and contrast how separation varied according to gender. Overall, a thorough examination of these cases and relevant secondary source literature reveals that the definition of the family and the critical place it held in Quebec's society were changing throughout the time period under observation. This took the form of a shift towards a more individualistic understanding of marriage centered around notions of love and companionship under the growing influence of liberalism.

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Ευχαριστώ Γιαγιά και παππού. Σας αγαπώ.

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Introduction

Quebec has been formally recognized as distinct from the rest of Canada in terms of language, culture, and governance, to name a few factors.[1] Quebec, for instance, is the only Canadian province governed by the Civil Code. Until the current *Civil Code of Québec* was enacted in 1994, the province was governed by the 1866 *Civil Code of Lower Canada*, which codified a system of private law based on the Custom of Paris that influenced the people under its jurisdiction in many ways, especially when it came to marriage. The Civil Code of 1866 articulated a patriarchal marriage model which proclaimed women as submissive to their husbands, who were the authoritative force in the relationship.[2] Though this rendition of the Code had outlawed the right for men to physically discipline their wives, there remained a thin and blurry line between male dominance and outright abuse.[3] In this sense, the question becomes: what options were available to married women in Montreal seeking to escape unhappy or toxic marriages? Ironically, the same piece of legislation that put women in this predicament also provided them with a solution; the Civil Code did not recognize divorce but instead promoted separation of bed and board.[4]

In simple terms, separation of bed and board is defined as a civil procedure that maintains a couple's marital bond while allowing them to live separately. It was by far the most realistic option for most working-class married couples seeking to part ways for financial, social, religious, and personal reasons. The presence of hundreds of suits for separation of bed and

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[1] "The Québec Nation and Québec's Distinctive Character," Secrétariat du Québec aux relations canadiennes, Gouvernement du Québec, last modified May 7, 2015, https://www.sqrc.gouv.qc.ca/relations-canadiennes/institutions-constitution/statut-qc/nation-quebecoise-specificite-en.asp

[2] Marie-Aimée Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," *Revue d'histoire de l'Amérique française,* 49(1) (1995): 5.

[3] Catherine Gélinas, "La violence conjugale dans le district judiciaire de St-François entre 1866 et 1893 d'après les procès en séparation de corps," MA Thesis (History), (Université de Sherbrooke, 2000), 63.

[4] Marie-Aimee Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," *Canadian Journal of Law and Society* 12, no. 1 (Spring 1997): 75.

board in the judicial archives gives rise to intriguing questions such as, why were women the overwhelming majority of those who initiated the filing for separation? How might separation of bed and board and the judicial system more broadly embody patriarchal structures? And in what ways, if any, did women use legal separation to achieve a degree of agency in a time defined by their legal inferiority and active oppression?

Primarily through a feminist framework, this thesis examines women's rights under the Civil Code of Lower Canada of 1866 with respect to the dissolution of marital relationships in late-nineteenth and early twentieth-century Quebec. More specifically, I focus on the link between family dynamics and separation of bed and board in Montreal between 1866 and 1916. I will argue that there were two forces at play when women filed for separation: structure and agency. My analysis of these cases will show that these two forces were constantly in opposition with each other, building on an in-depth examination of women's rights under the law and the extent to which they were mirrored in society. This will serve to answer the question of how women in these cases defined themselves and how others defined them. Such understandings reveal the multi-dimensional aspect of separation; it was not just about the marriage but about the perception and maintenance of individual and family honour as well. In essence, this work will showcase that the process that is separation of bed and board played a significant role in shifting the conception of the family – and women's place in it – to a more individualistic one based on the values of liberalism.

Historical Context

In order to understand the significance of separation of bed and board and its implications for married women, it is first necessary to examine their rights under the law and their standing in

society. The Civil Code's provisions regarding marriage, family dynamics, and the legal status of women were heavily rooted in existing laws based on the Custom of Paris. The Custom of Paris placed a strong emphasis on patriarchy within marriage, the family, and communities at large.[5] This solidified the husband's position as the head of the household and administrator of family property.[6] As a result, the Code also reinforced a patriarchal marriage model built on the notions of fidelity, support, and the prospect of raising children.[7] According to article 174, a husband had the legal obligation to receive, protect, and provide his wife with "[…] all the necessities of life, according to his means and condition".[8] In return, the law obliged wives to live with their husbands and be unconditionally obedient to them.[9] In other words, the Civil Code incorporated the Custom of Paris' position on the incapacity of married women, which centered around the notions of dependence, domesticity, and protection.[10] In essence, when a woman married, she sacrificed her personal and legal independence to her husband, who had the authority to make all decisions concerning her civil rights and children.[11] Historian Bettina Bradbury points out that even though by the nineteenth century the idea of marrying on the basis of love had replaced marrying to advance one's family or economic status, class and gender tended to dictate the power dynamic of these companionate marriages.[12] In the legal and social context just described, it became evident that the husband controlled just how companionate the marriage would be.[13]

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[5] Brian Young, *The Politics of Codification: The Lower Canadian Civil Code of 1866* (Montreal and Kingston: McGill-Queen's University Press, Canada, 1994), 144.
[6] Young, *The Politics of Codification,* 144.
[7] Québec. *Civil Code of Lower Canada: from the amended role deposited in the office of the clerk of the Legislative Council as directed by the Act 29 Vict. chap. 41, 1865* (Ottawa: M. Cameron, 1866) art. 165, https://www.canadiana.ca/view/oocihm.9_01835
[8] Québec, *Civil Code of Lower Canada,* art. 174.
[9] Québec, *Civil Code of Lower Canada,* art. 175.
[10] Young, *The Politics of Codification,* 147.
[11] Kathryn Harvey, "To Love, Honour and Obey: Wife-Battering in Working-Class Montreal, 1869-79," *Urban History Review = Revue d'Histoire Urbaine* 19, no. 2 (Oct 01, 1990): 135.
[12] Bettina Bradbury, *Wife to Widow: Lives, Laws, and Politics in Nineteenth-Century Montreal* (Vancouver: UBC Press, 2011), 62.
[13] Bradbury, "Companionate Patriarchies," 62.

This is why she cleverly coined the term "companionate patriarchy" to describe marriage in nineteenth-century Montreal – and the rest of the Western world for that matter.[14]

Women's inferior status under the law and in their marriages was mirrored in society. The industrial revolution established the form of family organization that many scholars, beginning with gender historians Louise Tilly and Joan Scott, call the "family wage economy," which became increasingly common in working-class communities.[15] As its name suggests, the family wage economy revolved around the interdependence of family members; men were the family's primary wage earners and if money was still lacking, children were next in line to take up a job.[16] Married working-class women did not typically work for wages for two prominent reasons. First, employers did not want to hire married women because they gave preference to younger, single women who had no other demands for their time.[17] The uncertainty in hiring a married woman lay in the high probability of her becoming pregnant and dedicating much of her time to family responsibilities.[18] Second, industrial jobs required specialization and were a full-time commitment outside of the home, which would directly interfere with their various domestic responsibilities.[19] As a result, married women did not work outside the home unless their family desperately needed the extra income.[20] Even so, the jobs available to them were temporary, low-paying, and exploitive.[21] Some married women engaged in piecework or in what Tilly and Scott call the "secondary labour force" by taking in boarders since these jobs gave them the chance to earn wages while still being able to look after their children.[22] More

[14] Bradbury, *Wife to Widow*, 62.
[15] Louise A. Tilly and Joan W. Scott, *Women, Work, and Family* (New York: Routledge, 1989), 63.
[16] Tilly and Scott, *Women, Work, and Family,* 104 and 126.
[17] Tilly and Scott, *Women, Work, and Family,* 126.
[18] Tilly and Scott, *Women, Work, and Family,* 126.
[19] Tilly and Scott, *Women, Work, and Family,* 124.
[20] Tilly and Scott, *Women, Work, and Family,* 124.
[21] Tilly and Scott, *Women, Work, and Family,* 126.
[22] Tilly and Scott, *Women, Work, and Family,* 125.

generally, however, their role as contributors to the family wage economy consisted of keeping their marriage alive and this revolved around their work in the home and their ability to put the needs of their husbands and children before their own.[23] Increasingly pertinent to the twentieth-century wife was the responsibility to manage the household's budget and financial affairs.[24] However, the stressing reality was that they only had one source of income to cover rent, food, and other bare necessities.[25]

Stay-at-home-wives and mothers did their very best to stretch their husband's income as widely and as efficiently as possible, most prominently by constantly searching for food bargains.[26] Women were extremely innovative when it came to saving money to keep their households afloat. For example, during the mid-nineteenth century, most working-class families in Montreal were living in duplexes or triplexes, which by their physical nature, left very little room for large gardens.[27] However, women who had access to even the smallest patch of land would utilize it to the best of their ability for their own consumption and for profit as well. Working-class women capitalized on gardens as sources of fruits and vegetables like potatoes, corn, barley, strawberries, apples, and plums.[28] Sometimes, if they cultivated more than they needed, they sold or traded their produce with neighbours.[29] The considerable amount of effort that went into the "stretching" of wages did not go unnoticed. As a matter of fact, in the 1880s, a Montreal workman stated to the editor of the Knights of Labor journal that a "thrifty, economical

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[23] James G. Snell, *In the Shadow of the Law: Divorce in Canada, 1900-1939* (Toronto: University of Toronto Press, 1991), 24.
[24] Snell, *In the Shadow of the Law,* 24.
[25] Ruth Frager and Carmela Patrias, "Industrial Capitalism and Women's Work," in *Discounted Labour: Women Workers in Canada, 1870-1939* (Toronto: University of Toronto Press, 2005), 24.
[26] Frager and Patrias, "Industrial Capitalism and Women's Work," 24-25.
[27] Bettina Bradbury, *Working Families: Age, Gender, and Daily Survival in Industrializing Montreal* (Toronto: University of Toronto Press, 2003), 164, ProQuest Ebook Central.
[28] Bradbury, *Working Families,* 163-164.
[29] Frager and Patrias, "Industrial Capitalism and Women's Work," 25.

and thorough good housekeeper who can lay out to advantage [a] … fair day's wage, is just as essential to the wellbeing of the workingman as the fair day's wage itself".[30] Therefore, domestic work performed by women was central to, appreciated, and recognized by the members of the household. It is evident that this system of marriage was a delicate and interdependent balance; one fault from either spouse could put the entire family's wellbeing in jeopardy. For women, circumstances like these reveal the structure versus agency dichotomy that is at the core of my research.

Literature review

Separation of bed and board falls into two main historiographical realms: marriage and marital breakdowns. Jean Pineau's, *Mariage, séparation, divorce: l'état du droit au Québec,* lays the groundwork for this conversation.[31] It carefully blends these two larger historiographical topics together from a technical and legal point of view. As this book was written in 1976, it takes traditional notions of gender ideology for granted and does not question or challenge the idea of the inherent correctness of patriarchal privilege. In the meantime, the approach to understanding the literature surrounding marriage and gender relations was changing. In 1985, American women's historian Suzanne Lebsock, challenged the ideal of "companionate marriage" in her book, *The Free Women Of Petersburg: Status and Culture in a Southern Town, 1784-1860*.[32] Lebsock argued that marriage in Virginia was not an equal union since the power scale was ultimately tipped in favour of men. Interestingly, Constance B. Backhouse replicated this idea in

[30] Bradbury, *Working Families,* 152.
[31] Jean Pineau, *Mariage, séparation, divorce: l'état du droit au Québec* (Montréal: Presses de l'Université de Montréal, 1976), 106.
[32] Lebsock, Suzanne, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York: Norton, 1984).

the Canadian context one year later in her article, " 'Pure Patriarchy': Nineteenth-Century Canadian Marriage" (1986).[33] As the title suggests, Backhouse, like Lebsock, raised doubts about the notion of companionate marriage by highlighting the inequalities that arose from the patriarchal marriage model. Two years later, Backhouse built on this concept in her article, "Married Women's Property Law in Nineteenth-Century Canada" (1988), which sheds light on the injustices riddled in common law provinces that stripped women of any control over their property.[34] She then went on to examine the factors that led to legislative reform providing women with more rights over their property but reiterated the idea that Canadian society was quite literally a "man's world," which counteracted the very purpose of egalitarian legislation.

In the second chapter of her book, *Wife to Widow: Lives, Laws, and Politics in Nineteenth-Century Montreal* (2011), Bettina Bradbury strikingly blends the ideas of these two eminent historians to coin the term "companionate patriarchy" to describe marriage in the nineteenth-century Western world, and more specifically, in Montreal.[35] Bradbury argues that no matter which marital regime was chosen (i.e community of property, separation of property, etc.) patriarchal structures were persistently present and consistently found ways to put women at a disadvantage in society, especially in relation to property. *Wife to Widow* also correlates the institution of marriage with the strengthening of male supremacy in Canada, which is interesting to put in conversation with Sarah Carter's *The Importance of Being Monogamous* (2008).[36] Carter drives forward the idea of how marriage was used as a tool for nation building in Western

[33] Constance Backhouse, " 'Pure Patriarchy': Nineteenth-Century Canadian Marriage," *McGill Law Journal* 31, no. 2 (1986).
[34] Constance B. Backhouse, "Married Women's Property Law in Nineteenth-Century Canada," *Law and History Review* 6, no. 2 (1988): 211–57.
[35] Bradbury, *Wife to Widow,* 62.
[36] Sarah Carter, *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915* (Edmonton: The University of Alberta Press, 2008).

Canada. Overall, the literature surrounding marriage in Canada has grown to incorporate a more inclusive narrative that takes into consideration gender relations and power structures.

There is secondly, a significant literature on marital breakdowns, most of it focused on divorce, which was essentially unavailable to Quebec couples in the nineteenth century.[37] As the main legal remedy for Quebecers experiencing marital breakdown prior to the 1960s, separation of bed and board has attracted a modest amount of scholarly attention. André Lachance and Sylvie Savoie's 1994 essay, "Violence, Marriage, and Family Honour: Aspects of the Legal Regulation of Marriage in New France," touched upon the subject of separation of bed and board from a social perspective.[38] Savoie later expanded on this work by producing her article, "Women's marital difficulties: Requests of separation in New France" (1998).[39] However, within the span of these four years, Quebec historian Marie-Aimée Cliche tackled this gap in the literature with her studies of separation of bed and board in the Montreal Judicial District between 1795-1879 (1995) and 1900-1930 (1997).[40]

Even though the timeline of these studies spans across four centuries, their findings follow similar trends. Cliche and Savoie reiterate the idea that gender roles and the separate spheres ideology were highly correlated with separation of bed and board. Cliche's work demonstrates the bias and double standard that prevailed in the courtroom as judges tended to be harsher in determining what were considered appropriate reasons for women to separate as

[37] In addition to Snell's, *In the Shadow of the Law,* see Roderick Phillips, *Putting Asunder: A History of Divorce in Western Society* (Cambridge: Cambridge University Press, 1988) and Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley, California: University of California Press, 1999).
[38] André Lachance and Sylvie Savoie, "Violence, Marriage, and Family Honour: Aspects of the Legal Regulation of Marriage in New France," In *Essays in the History of Canadian Law: Crime and Criminal Justice in Canadian History, vol. 5,* edited by Jim Phillips, Tina Loo, and Susan Lewthwaite (University of Toronto Press, 1994).
[39] Sylvie Savoie, "Women's Marital Difficulties: Requests of Separation in New France," *The History of the Family,* 3:4 (1998): 477, DOI: 10.1016/S1081-602X(99)80259-0.
[40] Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," and Cliche, "Les Séparations de Corps dans le District Judiciaire de Montréal de 1900 à 1930".

opposed to men. Savoie adds to this discussion by revealing that this double standard was also correlated with class. Furthermore, Cliche notes how husbands and wives were described in a stereotypical fashion in formal court proceedings; honest, virtuous, and obedient were adjectives used to describe wives while husbands were associated with being hard workers who provided for their families and remained sober. Both historians observe that consistently over time, women were the majority of those who initiated the filing for separation and did so when their husbands deviated from their prescribed gender role by being an alcoholic, abandoning / failing to provide for their families, and most prominently, being physically and/or verbally abusive.

Abuse and mistreatment are the focus of Kathryn Harvey's article, "To Love, Honour and Obey: Wife-Battering in Working-Class Montreal, 1869-79" (1990).[41] Cliche, Savoie, and Harvey's works reveal the flaws in the judicial system that actively oppressed women seeking justice and prevented them from receiving a fair trial. Harvey writes that money was one such obstacle; most women did not work for wages during this time in accordance with the male breadwinner ideology, which made them unable to pay for their husbands' arrest and/or the costs associated with going to trial. To make matters worse, most women did not want to risk losing their only source of income.[42] In 1991, Harvey followed up on her previous work with an article titled, "Amazons and Victims: Resisting Wife-Abuse in Working-Class Montréal, 1869-1879," which challenges the narrative that frames battered women as passive victims.[43] Catherine Gélinas' master's thesis, "La violence conjugale dans le district judiciaire de St-François entre 1866 et 1893 d'après les procès en séparation de corps" (2000), embodies the same narrative

[41] Harvey, "To Love, Honour and Obey: Wife-Battering in Working-Class Montreal, 1869-79".
[42] Harvey, "To Love, Honour and Obey: Wife-Battering in Working-Class Montreal, 1869-79," 137.
[43] Kathryn Harvey, "Amazons and Victims: Resisting Wife-Abuse in Working-Class Montréal, 1869-1879," *Journal of the Canadian Historical Association / Revue de la Société historique du Canada,* 2(1), (1991): https://doi.org/10.7202/031031ar.

centering specifically around separation trials related to physical abuse.[44] My thesis will further contribute to this emerging perspective by focusing on the empowering aspect of separation given that it symbolized women taking control of their lives in a way they never had before.

While Savoie briefly touches upon the negative connotation associated with separated women, Cliche neglects to address the aftermath of separation in her studies, which points to a gap in the literature that I seek to fill. As such, this thesis makes an effort to track the lives of separated men and women post-trial. Without diaries and interviews, it is extremely difficult to understand how separation was processed at an emotional level. However, utilizing genealogy websites such as *Ancestry.ca* provided me insight into some of their living and work situations. Paired with secondary sources, this type of information allows me to assess the extent to which separated women were truly independent from their husbands. This makes for a more complete discussion about the history of separation of bed and board and further develops the concept of structure versus agency that is central to this analysis. Doing so also explores the processes by which women emerge as social subjects, as opposed to perpetuating their existence in academic discourse as social objects.

I also intend to contribute to the knowledge surrounding separation of bed and board by examining cases initiated by husbands. The existing literature surrounding separation of bed and board tends to focus on the experience of wives, given that they comprised the overwhelming majority of plaintiffs. However, the minority of men who filed for separation against their wives should not be ignored. It is evident that men had the upper hand in society and in the eyes of the law. In this sense, I devote a significant part of my research to deciphering the ways in which

[44] Gélinas, "La violence conjugale".

men's separation cases differed from women's. Comparing and contrasting men and women's separation trials in my thesis will make for a more interesting and nuanced analysis of this topic.

Sources and Methodology

This thesis is based on a collection of cases drawn from Quebec's judicial archives by historians Peter Gossage, Donald Fyson, Thierry Nootens, and Eric Reiter, between 2013 and 2018 in the context of a funded research project called, "*Famille, droit et justice au Québec, 1840-1920"* (FDJQ). The goal of FDJQ was to reconstruct the experiences of Quebec families in civil and criminal justice proceedings during the rise of industrial capitalism. The project team assembled and photographed a collection of 1,836 civil and criminal court cases from the judicial districts of Montreal, Quebec, and Trois-Rivières, involving families from both rural and urban backgrounds. In total, separation of bed and board cases account for 183 of the cases collected by FDJQ for the three judicial districts. This thesis is based on the 121 separations of bed and board cases from the Superior Court for the Montreal Judicial District, which were all heard in the period 1872-1916.

My approach to judicial archival research involved sifting through each individual case (written in French and English) and inputting their information into a Microsoft Excel spreadsheet. I categorized each case by the names of the parties, the year it was filed, the gender of the plaintiff, the grievances, the outcome, and the length of the proceeding. Further qualitative information was obtained primarily from the cases' declarations, which essentially provided me with privileged access to the personal lives of the parties. It was here that I was able to obtain information about the length of the marriage, whether or not the marriage resulted in any children, a more in-depth recounting of the grievances, the couples' living situation, family

members, and financial situation. The spreadsheet allowed me to derive basic quantitative information (ex. the number of female plaintiffs compared to male) and visualize patterns (ex. how often were "alcoholism" and "abuse" cited together?). In addition, Eric Reiter's book, *Wounded Feelings: Litigating Emotions in Quebec, 1870-1950,* was especially useful in my analysis of depositions and cross-examinations, which speak to subjective ideas of honour, propriety, dignity, and scandal. This study encouraged me to engage with court records from a moral injury perspective, which was the inspiration behind my third chapter.[45]

Initially, more than half of the cases in this digitized collection did not contain a judgment in their file. In an attempt to fill these gaps, I visited the Bibliothèque et Archives nationales du Québec to access the *plumitifs* based on the year and number of the incomplete file.[46] I was able to find a judgment for about ten of these cases. And even when the judgement remained unknown, the *plumitif* was still worth my while to consult as it filled gaps on other information such as whether alimony or child custody was granted. Since court records only provide insight about the lives of the parties for the duration of the suit, I also turned to *Ancestry.ca* for the final chapter on outcomes. Some of the couples that I looked up had already been placed into a family tree, which allowed me to learn more about the individual's family and gave me an idea of what their life was like. *Ancestry* was mainly useful for its search engine that provided access to birth, baptism, death, and marriage certificates. If the couple or their parents had immigrated to or emigration from Quebec, *Ancestry* also has a collection of travel documentation readily available for consultation. In addition, their collection of census records

[45] Eric H. Reiter, *Wounded Feelings: Litigating Emotions in Quebec, 1870-1950* (Toronto: University of Toronto Press, 2019), 12.
[46] In English, the plumitif translates to "court ledgers," which are public registers of legal cases. Considering that the oldest case in the collection is over 150 years old, I visited the original physical document since their digitalization is not possible. For more information about court ledgers visit, https://www.quebec.ca/en/justice-and-civil-status/services/consult-court-record

was incredibly valuable for my research. Going through the Census of Canada records allowed me to track an individual or couple through time (in terms of their living situation or occupation, for example), from which I was able to hypothesize and/or come to conclusions about events that took place in their lives.

Organization

The structure of this thesis is as follows. Chapter one provides insight into marriage and separation by situating these matters with respect to the 1866 Civil Code of Lower Canada. This conversation further sheds light on the reasons why divorce was nearly impossible for the average Quebec couple to obtain. It then moves to cover the process involved in initiating a typical separation case, from legal and technical formalities to the bulk of building a case. This section also aims to reinforce the idea that every case is unique in terms of its makeup based on the motives, circumstances, and parties involved.

Chapter two begins with a deep dive into the motives, or underlying causes, that drove separation cases. The most prominent and consistent when broken down by gender were alcoholism and abuse, which more often than not occurred together. Adultery was another common factor cited by plaintiffs of both genders and many women in particular also commonly cited their husband's inability to provide for them. This section makes use of examples from this collection of cases to authenticate and enrich the discussion. The chapter then shifts from underlying factors to other concerns that were brought up in separation trials such as child custody, alimony, and property.

The third chapter of this thesis titled, "Gender Dynamics and Emotions," was inspired by Eric Reiter's work on legal history and emotions. I analyzed separation cases from an emotional

perspective in order to argue that separation cases can be considered cases of wounded feelings since the notions of honour, dignity, and propriety are mentioned often throughout the various documents that compose a legal case file. I examine this phenomenon from both an individualistic and family perspective. The fourth and final chapter addresses outcomes. This involves examining the role of judges and the factors that influenced their decisions, such as gender and class. The chapter ends with a brief discussion about what life after separation might have looked like, heavily based on research from *Ancestry.ca*.

Chapter 1: Process

Marriage, Divorce, and Separation under the Civil Code

According to article 185 of the Civil Code, "Marriage can only be dissolved by the natural death of one of the parties; while both live, it is indissoluble".[1] In other words, this provision did not recognize divorce as a legitimate way to end a marriage in Quebec. Throughout the nineteenth century, the institution of marriage represented much more than just the union of two individuals; it was used to measure the health and prosperity of Canadian society.[2] Compared to their British and American counterparts who were plagued with high divorce rates, Canadians prided themselves on their reputation as upholders of pure marriages.[3] Canada responded to the heightened sense of anxiety around the wavering state of marriage and the family, in the words of historian Sarah Carter, by "[…] [shoring] up the fortress of marriage, permitting no deviations, no divorce, and no remarriage".[4] Carter further explains that by preserving the sacred institution that was the monogamous marriage model, politicians, social reformers, and judges alike believed that they were maintaining the foundation for peace, order, and good government in Canada.[5] Therefore, most Canadians were not prepared to accept divorce since it would change the fundamental understanding of the family, gender relations, and society at large.[6]

In provinces like Quebec with no divorce courts, the only option available for couples seeking to end their marriage was through a parliamentary divorce, explained by historian James Snell in his 1991 book as "[…] a method of dissolving an individual marriage through passage of a private statute, without reference to any general legislation".[7] Arranging such an Act to be

[1] Québec, *Civil Code of Lower Canada,* art. 185.
[2] Backhouse, "Pure Patriarchy," 266.
[3] Backhouse, "Pure Patriarchy," 265.
[4] Carter, *The Importance of Being Monogamous,* 4.
[5] Carter, *The Importance of Being Monogamous,* 4.
[6] Snell, *In the Shadow of the Law,* 33.
[7] Snell, *In the Shadow of the Law,* 49.

passed was a complex and expensive procedure totalling anywhere between $800 and $1500.[8] To put this into perspective, historian Marie-Aimée Cliche notes that the average Canadian salary at the beginning of the twentieth century rested at $1200, making it unattainable for the majority of the population.[9] Divorce cases at the Parliamentary level were examined by the Senate's Standing Committee on Divorce, and were debated by key ministers and often the Prime Minister himself.[10] Couples seeking to bypass these measures by obtaining a divorce in the United States could not even do so because a divorce obtained by Canadians in the US was not considered valid.[11] It is in this context that in 1889, the Anglican Lord Bishop of Ontario said, "I think the Canadian law [is] the best in the world, because it makes it so difficult to get a divorce".[12]

Carter also writes about the element of shame and embarrassment associated with divorce cases as "[…] the names of couples seeking divorces were published for three months in the official *Canada Gazette,* as well as in two newspapers located where the applicants resided".[13] The strong religious presence in Quebec served as another deterrent to divorce. The Roman Catholic Church reminded its congregants that the vows a bride and groom took before God were permanent and that divorce violated biblical precepts.[14] How might Christians balance honouring this oath while still prioritizing personal happiness and physical safety? In lieu of

[8] Snell, *In the Shadow of the Law,* 51.
[9] Marie-Aimee Cliche, "Les Séparations de Corps dans le District Judiciaire de Montréal de 1900 à 1930," 76.
[10] Carter, *The Importance of Being Monogamous,* 25.
[11] Carter, *The Importance of Being Monogamous,* 26.
[12] "OTTAWA NEWS: CLERGYMEN TALK OF HON. MR. FOSTERS MARRIAGE AND DISAPPROVE OF IT BECAUSE IT WILL TEND TO ENDORSE LOOSE DIVORCE LAWS LORD STANLEY IS CAUTIOUS THE NORTHERN PACIFIC WILL KEEP PEGGING AWAY FOR THAT CROSSING--POSTOFFICE ABSCONDAR--GENERAL NOTES." *The Globe,* Jul 11, 1889. https://lib-ezproxy.concordia.ca/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fhistorical-newspapers%2Fottawa-news%2Fdocview%2F1647935744%2Fse-2%3Faccountid%3D10246.
[13] Carter, *The Importance of Being Monogamous,* 25.
[14] Snell, *In the Shadow of the Law,* 32.

divorce, the Civil Code permitted separation of bed and board.[15] This practice, with roots in traditional French law,[16] granted couples the right to live in separate quarters while preserving their marital bond.[17] Legal scholar Jean Pineau makes the following remark about separation of bed and board: "On s'est rendu compte que l'impossibilité pour les époux de se remarier, permettait à l'union de subsister; aussi disait-on que les époux étaient séparés corporaliter mais non sacramentaliter".[18] Separation of property is also included in this process, which dissolves the community of property and returns the wife's right to her dowry and any property that she brought into the marriage.[19]

Examining socioeconomic and religious factors ultimately explains why there was only one recorded divorce in Quebec in 1900 compared to 34 separations of bed and board in the city of Montreal alone during that same year.[20] Unlike divorce, the Catholic Church approved of separation of bed and board since it was a solution that preserved couples' marital tie, and by effect, eliminated the possibility of remarriage.[21] Legal separation was also more affordable. Based on 136 cases that include a total sum of fees, Cliche's research demonstrates that the average cost for separation of bed and board at the beginning of the twentieth century was $146.[22] More broadly, however, the grounds for separation were also more extensive than that of divorce, which only officially recognized adultery.[23] The 1866 Civil Code states:

> Art. 186 Separation from bed and board can only be demanded for specific causes; it cannot be based on the mutual consent of the parties.

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[15] Cliche, "Les Séparations de Corps dans le District Judiciaire de Montréal de 1900 à 1930," 75.
[16] Young, *The Politics of Codification,* 152.
[17] Joseph Frémont, *Le divorce et la separation de corps: thèse,* (Québec: A. Côté, 1886) 74, Canadiana, https://www.canadiana.ca/view/oocihm.03255
[18] Pineau, *Mariage, séparation, divorce,* 106.
[19] Québec, *Civil Code of Lower Canada,* art. 208.
[20] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 76.
[21] Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," 7.
[22] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 76.
[23] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 76-77.

Art. 187	A husband may demand the separation on the ground of his wife's adultery.
Art. 188	A wife may demand the separation on the ground of her husband's adultery, if he keep his concubine in their common habitation.
Art. 189	Husband and wife may respectively demand this separation on the ground of outrage, ill-usage or grievous insult committed by one toward the other.
Art. 191	The refusal of a husband to receive his wife and to furnish her with the necessaries of life, according to his rank, means and condition, is another cause for which she may demand the separation.[24]

Given that these are the legal conditions that lawyers had to use to build and shape separation cases, it is worthwhile to shed light on their potentially problematic technicalities. Even though separation was viewed as a more favourable outcome than divorce, it still jeopardized the cherished notion of the family so fundamental to Quebec and Canadian society and culture. At first glance, it is obvious that these provisions were created with the intention of making separation difficult to obtain. This claim is further validated by the fact that the mutual consent of spouses was not recognized under the Code. Also unmistakable is the double standard when it came to adultery.[25] The condition that the wife could only file for separation against her husband if he kept his mistress in their home meant that it was easier for men to achieve separation on the basis of adultery than women. It also implied it was a bigger transgression for women to commit adultery than men, and this condition was only officially amended in 1954.[26] However, as of 1885, judges agreed that if the husband's adultery took place in public, it constituted a grave insult, making it a legitimate reason for separation.[27]

Also, the conditions outlined in article 189 of the Civil Code are particularly decisive yet incredibly subjective. This is further complicated by article 190, which explicitly states that the

[24] Québec, *Civil Code of Lower Canada,* art. 186-189, 191.
[25] Gélinas, "La violence conjugale," 25.
[26] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 88.
[27] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 88.

severity of outrage, ill-usage or grievous insult is ultimately left to the discretion of the court which, "in appreciating them, must take into consideration the rank, condition and other circumstances of the parties".[28] Therefore, although the conditions for obtaining a separation were outlined, they were written in a way that made the anticipated outcome uncertain.

"A l'Honorable Cour supérieure…"

Even though married women were considered legally incapacitated and needed their husband's consent to carry out any legal or administrative function, they *were* allowed to request separation of bed and board.[29] However, this was not as simple as it sounded because in order for women to grasp this bit of agency, they had to overcome layers of oppression deeply embedded in society and in the judicial system.

The real challenge was that before a formal court proceeding could take place, women had to pay the mandatory court fees, which was nearly impossible for them because, as previously established, married women did not work outside the home during this time since their husbands were the breadwinners of the family.[30] Snell describes the precarious socioeconomic situation that married women were in as he writes, "The wife was caught in the middle - forced into a dependent role and then denied support when needed".[31] Luckily, if a woman was willing to choose a high-risk high-reward scenario, she could opt for the *in forma pauperis*[32] procedure, which allowed the separation lawsuit to take place free of charge but after the verdict, the responsibility fell on the losing party to pay all the costs.[33] *In forma pauperis*

[28] Québec, *Civil Code of Lower Canada,* art. 190.
[29] Gélinas, "La violence conjugale," 23.
[30] Gélinas, "La violence conjugale," 29.
[31] Snell, *In the Shadow of the Law,* 25.
[32] Québec (Province), and W. A. Weir. *Code of Civil Procedure of the Province of Quebec: With Amendments* (Montreal: A. Periard, 1889), art. 31-33, http://online.canadiana.ca/view/oocihm.91520
[33] Gélinas, "La violence conjugale," 29.

could be used in defense as well. In fact, four women and two men in this collection of 121 separation of bed and board cases from the Superior Court from the Montreal Judicial District took advantage of this opportunity. The *in forma pauperis* clause actually came to the rescue for many women since they found themselves in the winning position more often than men.[34] For instance, 53 out of 109 cases initiated by wives claimed *in forma pauperis.* An example of such a case is that of Florestine Hotte, who sued her husband, Joseph Onésime Lemay, for separation of bed and board in 1904, on the grounds that he abandoned her and their child in May of 1900, and left her completely unaware of his whereabouts.[35] She also specified that she waited four years before initiating a suit in the hopes that he would return.[36] Since he did not, she ultimately requested to sue her husband for separation *in forma pauperis* because she was poor and did not have the means to fund this legal action.[37] In the end, Hotte was granted separation, and her case demonstrates how despite the structural oppressive forces at work limiting their agency, having the option of claiming the *in forma pauperis* clause acted as a real salvation for married women in Montreal, giving them a sense of power they would otherwise not be able to have.

The next obstacle that stood in their way was that, in accordance with the Civil Code, a married woman was prohibited from appearing in judicial proceedings without her husband's authorization.[38] Clearly, this provision was an attempt to discourage women from obtaining legal separations because it would be illogical for husbands to permit their wives to take legal action against them.[39] More broadly, however, it is a reflection of patriarchal assumptions embedded in the law. Anticipating this stalemate, under article 194 of the Civil Code, judges had the power to

[34] Gélinas, "La violence conjugale," 29.
[35] BANQ-Vieux Montreal, Superior Court District of Montreal, *Florestine Hotte v. Joseph Onésime Lemay,* 1904.
[36] *Florestine Hotte v. Joseph Onésime Lemay,* 1904.
[37] *Florestine Hotte v. Joseph Onésime Lemay,* 1904.
[38] Québec, *Civil Code of Lower Canada,* art. 176.
[39] Gélinas, "La violence conjugale," 27.

authorize a woman to sue for separation should she (and her lawyers) provide him with a written statement outlining her motives behind this request.[40] It was also standard practice for this request to include or be followed by an affidavit – a sworn statement of the truth made under oath. Judges used their discretion in determining whether or not there was a potential separation case at hand, and if there was, married women were granted permission to formally begin their separation trial.[41] Based on my research, from a solely numerical perspective, women were able to get past this first step fairly easily. However, not all women were so fortunate.

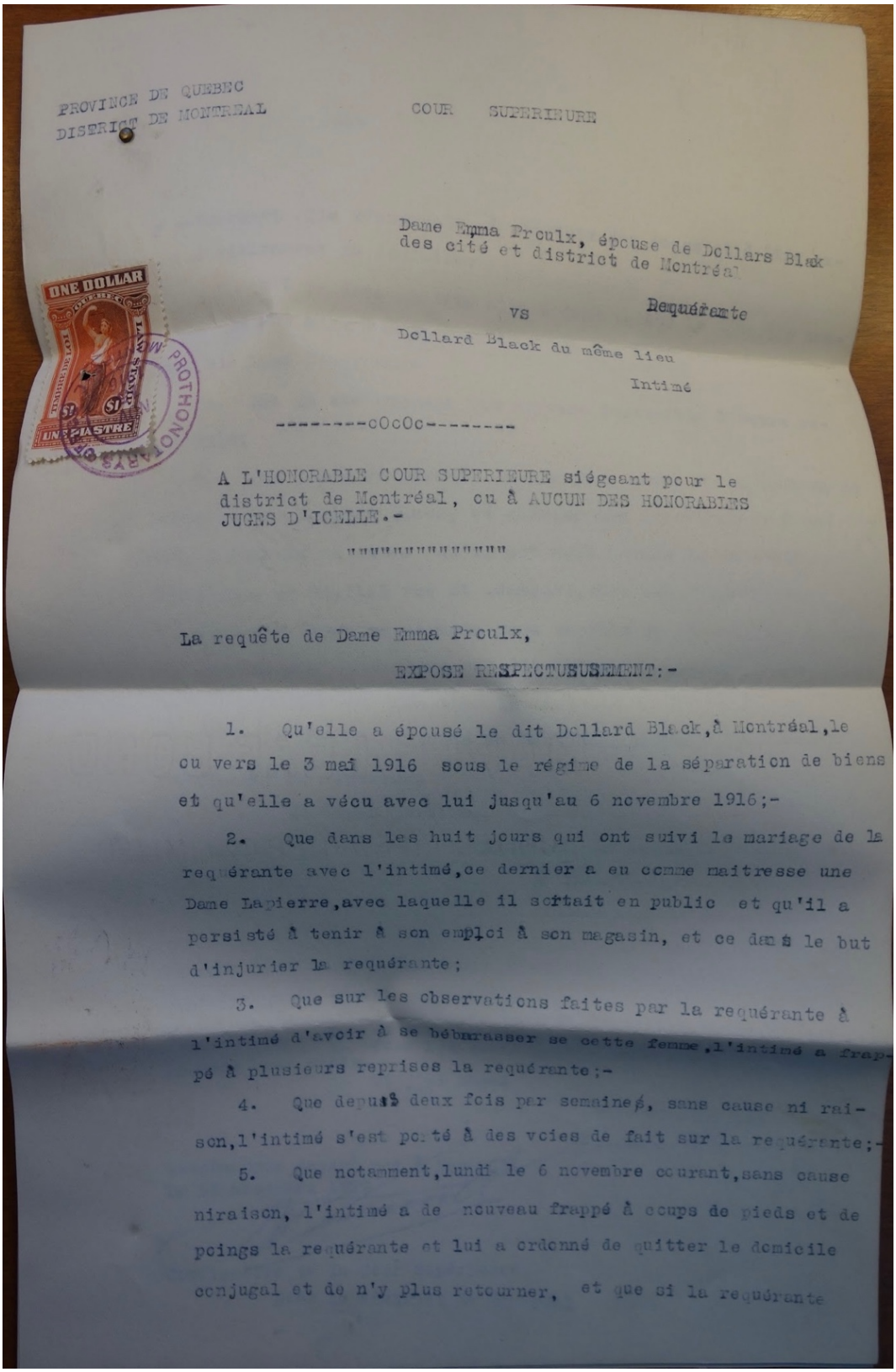
Alida Mailloux's written request to pursue her husband for separation in 1899 revolved primarily around her living situation. Mailloux wrote that she and her husband, Joseph Guy, lived at his father's house, alongside Guy's siblings.[42] She claimed that Guy and his family physically and verbally abused her, and that his refusal to relocate subjected her to further constant sufferings.[43] The judge assigned to Mailloux's case refused her request to move forward with a formal trial on the basis that her motives for separation were insufficient.[44] Interestingly, it appears that the couple did eventually move out of Guy's father's house, which might have eased their marriage. In 1901, the couple was recorded living on their own, along with their three children and a boarder,[45] and had another five children between 1901 and 1909.[46]

On the other hand, women like Emma Proulx, who filed for separation from her husband Dollard Black in 1916, interestingly, after only six months of marriage, were more successful. As

[40] Gélinas, "La violence conjugale," 27.
[41] Gélinas, "La violence conjugale," 28.
[42] BANQ-Vieux Montreal, Superior Court District of Montreal, *Alida Mailloux v. Joseph Guy,* 1899.
[43] *Alida Mailloux v. Joseph Guy,* 1899.
[44] *Alida Mailloux v. Joseph Guy,* 1899.
[45] Ancestry.com, *1901 Census of Canada*, Census Place: *Quebec*; Page: *16*; Family No: *149,* Lehi, UT, USA: Ancestry.com Operations Inc, 2006, https://www.ancestry.ca/search/collections/8826/records/12790097?tid=193494421&pid=232524260344&ssrc=pt
[46] "Alida Mailloux," Pelletier Hopkins Family Tree, Michelle Pelletier, ancestry.com, https://www.ancestry.ca/family-tree/person/tree/193494421/person/232524260344/facts

can be observed, Proulx's lawyers constructed the document in a way that satisfied all the necessary conditions for her case to be heard (see figures 1 and 2). For instance, the second point alleged that Black was having an affair with a woman by the name of Miss Lapierre, who worked in his store (the type of occupation is not specified). Technically, according to the Code, since Miss Lapierre was not kept in their home, this claim alone would be insufficient to obtain a trial, let alone separation. However, points 3,4,5, and 7 described the violence that Proulx endured at the hands of Black, going as far as saying that living with the defendant had "become impossible".[47] Therefore, in this case, the judge authorized Proulx to pursue her husband in a formal separation trial, and ultimately sided in her favour, granting the application to make her and her husband separate as to bed and board. These two cases demonstrate how a calculation had to be made on incalculable factors like the subjective experience of abuse or trauma.[48] The drastic difference in outcomes between Mailloux and Proulx's cases ultimately reflects the consequences that came from the combination of judges' individual discretion and the ambiguous motives for separation outlined in the Civil Code.

[47] BANQ-Vieux Montreal, Superior Court District of Montreal, *Emma Proulx v. Dollard Black,* 1916.
[48] Reiter, *Wounded Feelings,* 49.



PROVINCE DE QUEBEC
DISTRICT DE MONTREAL

COUR SUPERIEURE

Dame Emma Proulx, épouse de Dollard Black
des cité et district de Montréal

vs Requérante

Dollard Black du même lieu

Intimé

--------oOcOo--------

A L'HONORABLE COUR SUPERIEURE siégeant pour le district de Montréal, ou à AUCUN DES HONORABLES JUGES D'ICELLE.-

"""""""""""""""""

La requête de Dame Emma Proulx,

EXPOSE RESPECTUEUSEMENT:-

1. Qu'elle a épousé le dit Dollard Black, à Montréal, le ou vers le 3 mai 1916 sous le régime de la séparation de biens et qu'elle a vécu avec lui jusqu'au 6 novembre 1916;-

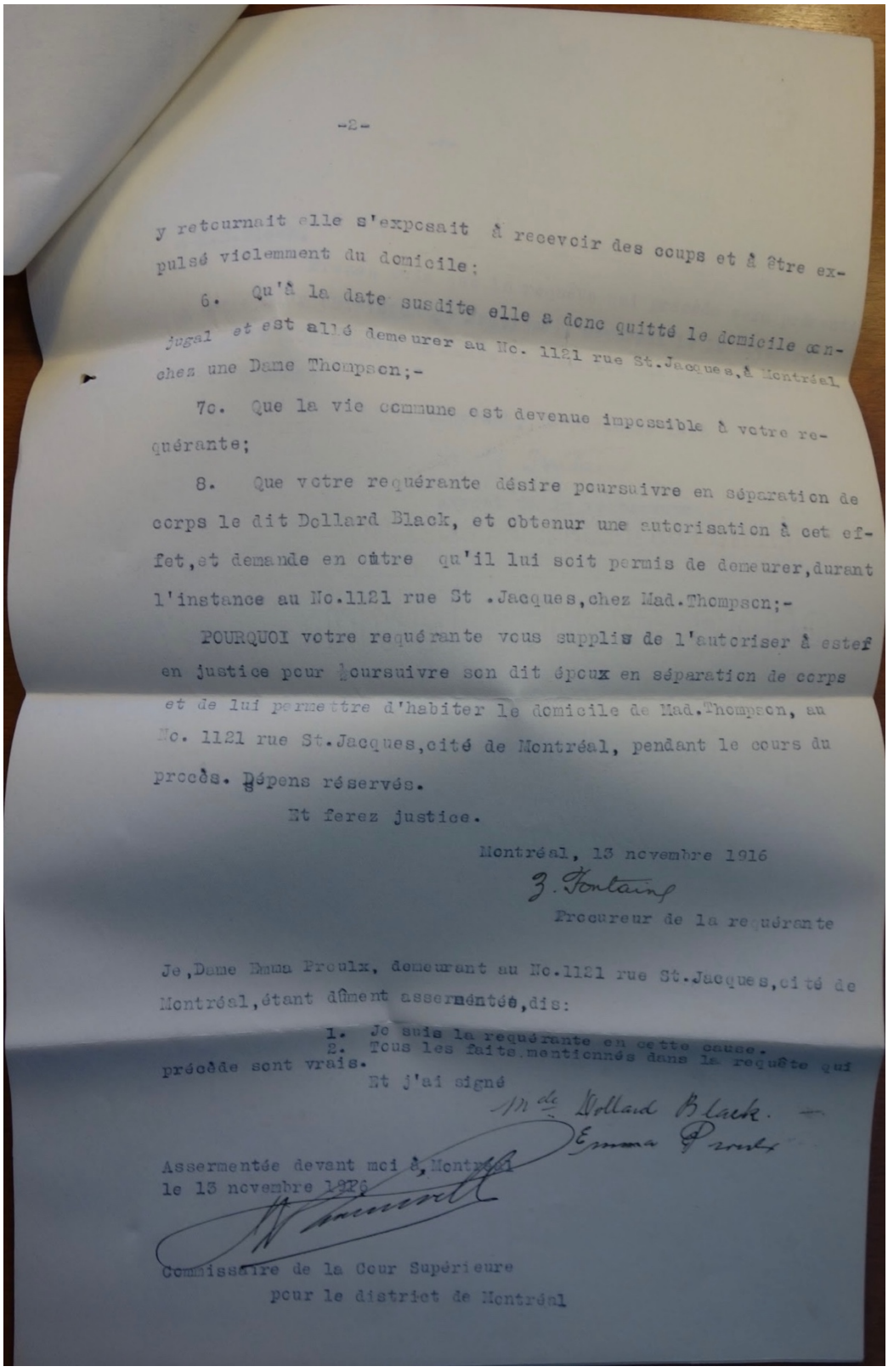
2. Que dans les huit jours qui ont suivi le mariage de la requérante avec l'intimé, ce dernier a eu comme maitresse une Dame Lapierre, avec laquelle il sortait en public et qu'il a persisté à tenir à son emploi à son magasin, et ce dans le but d'injurier la requérante;

3. Que sur les observations faites par la requérante à l'intimé d'avoir à se débarasser se cette femme, l'intimé a frappé à plusieurs reprises la requérante;-

4. Que depuis deux fois par semaines, sans cause ni raison, l'intimé s'est porté à des voies de fait sur la requérante;-

5. Que notamment, lundi le 6 novembre courant, sans cause niraison, l'intimé a de nouveau frappé à coups de pieds et de poings la requérante et lui a ordonné de quitter le domicile conjugal et de n'y plus retourner, et que si la requérante

Figure 1: Requête pour autorisation de poursuivre: BANQ-Vieux Montreal, Superior Court District of Montreal, Emma Proulx v. Dollard Black, 1916.



-2-

y retournait elle s'exposait à recevoir des coups et à être expulsé violemment du domicile;

6. Qu'à la date susdite elle a donc quitté le domicile conjugal et est allé demeurer au No. 1121 rue St.Jacques,à Montréal chez une Dame Thompson;-

7o. Que la vie commune est devenue impossible à votre requérante;

8. Que votre requérante désire poursuivre en séparation de corps le dit Dollard Black, et obtenur une autorisation à cet effet,et demande en outre qu'il lui soit permis de demeurer,durant l'instance au No.1121 rue St .Jacques,chez Mad.Thompson;-

POURQUOI votre requérante vous supplie de l'autoriser à ester en justice pour poursuivre son dit époux en séparation de corps et de lui permettre d'habiter le domicile de Mad.Thompson, au No. 1121 rue St.Jacques,cité de Montréal, pendant le cours du procès. Dépens réservés.

Et ferez justice.

Montréal, 13 novembre 1916

J. Fontaine

Procureur de la requérante

Je,Dame Emma Proulx, demeurant au No.1121 rue St.Jacques,cité de Montréal,étant dûment assermentée,dis:

1. Je suis la requérante en cette cause.
2. Tous les faits mentionnés dans la requête qui précède sont vrais.

Et j'ai signé

Mde Dollard Black. —

Emma Proulx

Assermentée devant moi à Montréal
le 13 novembre 1916

Commissaire de la Cour Supérieure
pour le district de Montréal

Figure 2: Requête pour autorisation de poursuivre (continued)

Once the request for separation was approved, the first document that the plaintiff and their lawyer drew up was the *declaration* (déclaration), which is the foundation of the case.[49] This piece lists the arguments and facts relevant to the plaintiff's overall claim in chronological order and is created in support of the evidence and list of exhibits.[50] For example, the declaration always begins with a statement about when and where the couple got married and whether or not the marriage resulted in any children. As a result, the inclusion of the couple's marriage certificate is frequently entered in the list of exhibits. The *declaration* also recounts the plaintiff's living situation. Women often sought refuge from their abusive husbands by living with their parents, siblings, or friends. Based on this collection of cases, 63 couples declared that they were already living separately from each other and an additional 31 women requested the court's permission to live outside the conjugal home for the duration of the legal action. This demonstrates that active resistance to abuse and mistreatment could take a defensive form.[51]

The *writ of summons* (bref d'assignation) was also created concurrently with the declaration. This document notifies the defendant that a legal action has been taken against them, and orders them to appear in court to respond to the plaintiff's accusations.[52] The defendant's response to this document is called a *written appearance* (comparution) and is signed by their lawyer.[53] In the cases I examined, 60% of defendants intervened during the legal proceedings taking place against them. However, the extent of the intervention varied. A complete response consists of a defense (défense) and answer (réponse), which present any counterarguments to the dispute at hand and brings up further concerns, respectively. For example, Marie Perron pursued

[49] Gélinas, "La violence conjugale," 35.
[50] Gélinas, "La violence conjugale," 35.
[51] Gélinas, "La violence conjugale," 80.
[52] Gélinas, "La violence conjugale," 35.
[53] Gélinas, "La violence conjugale," 35.

her husband, Joseph Brassard, for separation in 1902, on the grounds of his alcohol addiction and abusive behaviours towards her.[54] Brassard's defense denied all the allegations made against him and instead attempted to flip the narrative and frame his wife as a liar: "[…] les allégués […] sont absolument imaginaires et fausse, mais qu'au contraire, les torts sont complètement du côté de la Requérante […] La Requérante est d'un caractère emporté, elle manque de jugement […]".[55] A similar situation occurred in 1903 during Marie Derrennes' cross-examination by her husband's defense lawyers, which she quickly shut down:

> Q: Le défendeur plaide que vous êtes une ivrognesse, est-ce vrai?
> A: Il me l'a dit.
> Q: Est-ce vrai que vous êtes une ivrognesse?
> A: Si j'étais une ivrognesse, je n'irais pas tous les jours travailler en journée comme je le fais.
> Q: Je vous demande s'il est vrai que vous êtes une ivrognesse?
> A: Non, certain.
> Q: Alors quand le défendeur dit que vous êtes une ivrognesse…?
> A: Ah, ce n'est pas vrai certain, si j'étais une ivrognesse, je n'irais pas travailler tous les jours sur les planchers, travailler comme je le fais, je travaille à la journée, laver les planchers, les peintures, faire toutes sortes d'ouvrages quand je puis travailler.[56]

Although this kind of defense is expected, as historian Catherine Gélinas points out, it still posed a threat to the positive outcome for the plaintiff.[57] But the fact that women still consistently chose to initiate separation trials is a direct reflection of their challenge to patriarchy and resistance to any form of mistreatment.[58] Ultimately, Perron and Derrennes were granted separation.

Since a case could be brought to an end at any given step in the process, some case files contain different documents from others.[59] In addition to the initial request to pursue legal action,

[54] BANQ-Vieux Montreal, Superior Court District of Montreal, *Marie Perron v. Joseph Brassard,* 1902.
[55] *Marie Perron v. Joseph Brassard,* 1902.
[56] BANQ-Vieux Montreal, Superior Court District of Montreal, *Marie Derrennes v. Henri Blanchet,* 1903.
[57] Gélinas, "La violence conjugale," 94-95.
[58] Gélinas, "La violence conjugale," 95.
[59] Gélinas, "La violence conjugale," 36.

a separation case file might include other *motions* (requêtes) addressed to the court such as to proceed *in forma pauperis,* for alimony, or child custody, to name a few.[60] Some cases that include a written appearance also include a *Certificate of No Plea* (Certificat de non Plaidoyer), indicating that the defendant has not pled in the action within the time frame permitted for them to do so. Other defendants, such as the remaining 40%, did not take any action whatsoever. Either circumstance would provoke the plaintiff's lawyer(s) to issue an entry for a default judgement, persuading the court to rule in the plaintiff's favour. On this note, historian Marie-Aimée Cliche cleverly points out the loophole in which default judgements essentially bypassed the strict laws surrounding separation.[61] Relatedly, the last piece a file should contain is the *judgement* (jugement), but if missing, the *plumitif* is a good resource to consult to fill these gaps.

Separations in Place and Time

One theme that emerged from this research is that the overwhelming majority of separation of bed and board cases came from city dwellers (see table 1). As can be observed, 92% of these cases involved people from Montreal and its immediate vicinity. This number is meaningful considering that in 1901, the city of Montreal's population made up 85% of the Montreal Judicial District and 90% in 1911.[62] In their research about marriage and separation in New France, historians André Lachance and Sylvie Savoie, even suggest that living in urban areas perhaps increased the likelihood of separation.[63] The diversity of urban society could have meant that its inhabitants were more familiar with the separation process through public discourse and were

[60] Gélinas, "La violence conjugale," 35.
[61] Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," 31.
[62] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 78.
[63] Lachance and Savoie, "Violence, Marriage, and Family Honour," 150.

therefore more open to the idea of separation.[64] As will be further discussed in chapter three, life in a city like Montreal limited a couple's privacy. As unfavourable as this must have been for obvious reasons, it could just as easily have been a saving grace for women seeking support in the form of witness testimonies at their separation trial. Testifying at a separation trial was voluntary.[65] However, issuing a subpoena forced witnesses including family members, colleagues, and friends, to take the stand, which was not an easy task but crucial in aiding judges in their decision-making process.[66] Neighbours were especially in the know, which for couples meant that they "[…] lived on the same street as people who might be called to give evidence about them".[67] For example, in 1902, Clementine Charette was summoned to provide a deposition in the separation case of her former neighbours, Caroline Hébert and Philias Michaud. She was first interrogated by the plaintiff's (Hébert's) lawyers who were mainly concerned about what she had overheard one summer day:

> Q: Pendant que vous restiez dans le voisinage de Madame Michaud, avez-vous entendu aucune scène, avez-vous été témoin d'aucune scène?
> A: Oui, monsieur, j'ai entendu, je n'ai pas été témoin. Entre autres, un jour j'étais sur ma galerie, leur porte était ouverte, j'ai entendu monsieur Michaud dire des injures à sa femme. Il la traitait de 'sacré maudite garce, de torgueuse, de vache et qu'il ne lui fournirait pas une maudite cent pour vivre, qu'elle pourrait vivre comme elle l'entendrait. Et certaines autres injures dont je ne me rappelle pas. C'est trop vague dans ma mémoire.
> Q: Vous vous rappelez de celles-là?
> A: Oui, monsieur.
> Q: Est-ce qu'il parlait fort?
> A: Fort.
> Q: Est-ce que les autres voisins pouvaient entendre?
> A: S'ils avaient été sur leurs galeries comme moi ils pouvaient entendre.[68]

Charette was then cross-examined by the defendant's (Michaud's) lawyers:

> Q: Est-ce que vous l'aviez vu avant cette scène, Monsieur Michaud?

[64] Lachance and Savoie, "Violence, Marriage, and Family Honour," 151.
[65] Gélinas, "La violence conjugale," 44.
[66] Gélinas, "La violence conjugale," 44.
[67] Lachance and Savoie, "Violence, Marriage, and Family Honour," 157.
[68] BANQ-Vieux Montreal, Superior Court District of Montreal, *Caroline Hébert v. Philias Michaud,* 1902.

A: Oui, monsieur.
Q: Lui avez-vous déjà parlé?
A: Non, monsieur.
Q: Vous ne l'avez seulement qu'entendu, vous ne l'avez pas vu?
A: J'ai entendu.
Q: Comment pouvez-vous dire qu'il lui a fait une scène?
A: Parce que je connaissais bien sa voix, j'avais entendu sa voix plusieurs fois.
Q: Vous ne lui avez jamais parlé et vous connaissez sa voix?
A: Je l'entendais parler de chez lui, je connaissais très bien sa voix.[69]

Charette was one of fifteen witnesses who provided depositions for this case, which makes it reasonable to infer that these testimonies played a large and perhaps decisive role in the outcome of their trial. Although this case is particularly dense, it goes to show that living in an urban setting fostered greater sensitivity and support around issues of abuse that were more difficult to find in isolated rural areas.[70]

Table 1: Geographic distribution of separation of bed and board cases

Urban	Rural
City of Montreal: 99	Vaudreuil: 1
Saint Henri: 3	Saint Jacques le Mineur: 1
Notre-Dame-De-Grâce: 2	Saint Julie: 1
Cote-Saint-Paul: 1	Laprairie: 1
Hochelaga: 1	Saint-Norbert: 1
Town of Saint-Louis: 1	Village de Coteau Station: 1
City of Westmount: 1	Sault au Recollet: 1
Lachine: 1	Boucherville: 1
Saint-Cunégonde: 2	Côte-Visitation: 1
	Saint-Télesphore: 1
Total: 111	**Total: 10**

Likewise, depositions of the plaintiff and defendant are equally valuable sources because they are first-hand accounts of their personal experiences. Among other things, Hébert's deposition was useful in revealing the extensive abuse that she and her child suffered while living with Michaud:

[69] *Caroline Hébert v. Philias Michaud,* 1902.
[70] Lachance and Savoie, "Violence, Marriage, and Family Honour," 150.

Q: Le défendeur vous a-t-il jamais tiré par les cheveux?
A: Oui, monsieur, il m'a tiré par les cheveux.
Q: En quelle occasion?
A: Un soir, j'avais couché le petit bien à bonne heure, je lui avais dit de prendre le petit pour me reposer, l'enfant n'a pas voulu rester silencieux; monsieur Michaud est monté en haut, il était en boisson, il a descendu l'enfant, l'enfant était dans un moule, il l'a jeté sur un sofa. Je lui ai dit: "Tu devrais avoir honte de traiter l'enfant comme cela". Il m'a tiré par les cheveux.
Q: L'enfant était-il blessé dans le temps?
A: Il avait l'enflure.
Q: Il avait un genou dans le plâtre?
A: Oui, monsieur.

[…]

Q: Est-ce en voulant protéger l'enfant qu'il vous a prise par les cheveux?
A: Non, monsieur, parce que je lui ai dit: "Tu devrais avoir honte d'user l'enfant comme cela". Il m'a dit: "Ma maudite, mêle-toi de tes affaires".[71]

On the other hand, Michaud's 22-page-long deposition provided his recollection of events, but also revealed some backhanded remarks about his wife's behaviour: "Madame Michaud n'a jamais été d'un caractère à se laisser tirer par les cheveux, je vous garantis de cela".[72] Though not for certain, this comment seemingly speaks to Hébert's ability to become aggressive. Likewise, when asked about his drinking habits, Michaud conveniently deflected the conversation to his wife: "[…] c'est faux, la preuve c'est que je n'ai jamais tenu une goutte de boisson chez moi; peut-être que Madame Michaud en a tenu pour sa part, […]".[73] Therefore, reading in between the lines of depositions and witness testimonies is a useful perspective to adopt when examining such documents. After 11 months of proceedings, the court rendered its judgment in Hébert's favour and declared her and her husband separate as to bed and board.

On this note, the duration of separation cases varied. As previously mentioned, a case could be discontinued at any point in the process. For example, it only took four days for the

[71] *Caroline Hébert v. Philias Michaud,* 1902.
[72] *Caroline Hébert v. Philias Michaud,* 1902.
[73] *Caroline Hébert v. Philias Michaud,* 1902.

court to refuse Alida Mailloux's request to pursue her husband for separation and put her case to rest. Based on the 51 cases in this collection that contain a final judgement or come to a conclusion of some sort, my research indicates that it took an average of approximately five and a half months to put a case to rest, with the mode being one month (see figure 3).

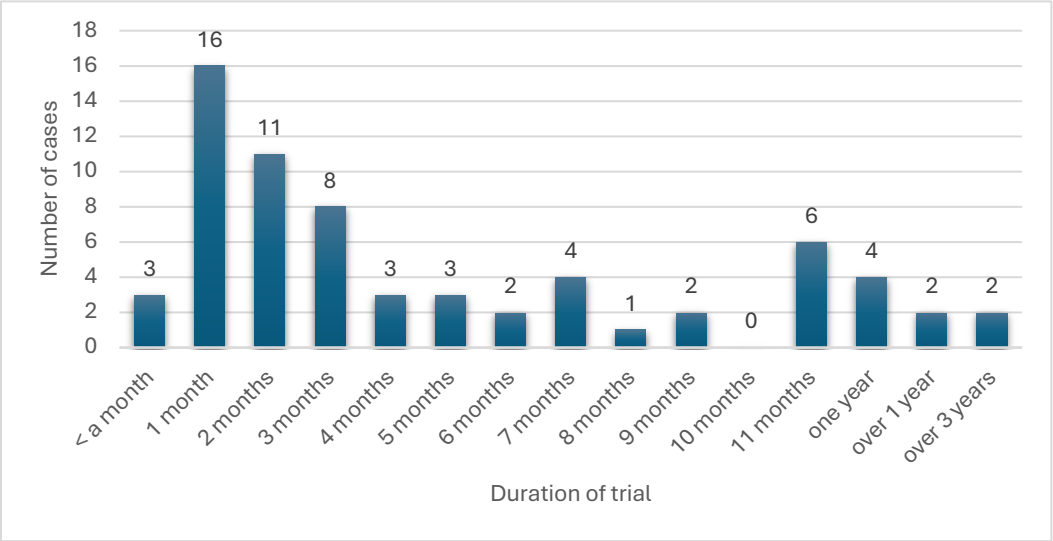


Figure 3. Duration of action based on 51 cases with a judgement

However, this matter is further complicated by cases in which the plaintiff has attempted to pursue the defendant multiple times. Lucie Charlebois' lawsuit against her husband, François-Xavier St. Pierre, in 1896 was one such case as this was her fourth attempt to obtain separation.[74] St. Pierre had managed to persuade her to drop her three pervious suits based on his promise to change his behaviour.[75] Another case with a complicated timeline is that of 19-year-old Elizabeth Delicato, who filed for separation of bed and board against her husband, Francesco Mandato, in May of 1904. She claimed that Mandato would call her derogatory names while beating and kicking her so hard that these altercations left marks and bruises on her body.[76] "He was bad

[74] BANQ-Vieux Montreal, Superior Court District of Montreal, *Lucie Charlebois v. François-Xavier St. Pierre,* 1896.
[75] *Lucie Charlebois v. François-Xavier St. Pierre,* 1896.
[76] BANQ-Vieux Montreal, Superior Court District of Montreal, *Elizabeth Delicato v. Francesco Mandato,* 1905.

enough when sober, but when he was drunk, he would become worse," said Delicato as she recalled an instance where her husband struck and "nearly broke" the back of her head.[77] She also testified that after giving birth to her first child, she was "suffering in pain for about one year," and even feared for her life when he would come home.[78] Delicato's downstairs neighbour, Philomene Martineau, served as a witness in her separation trial. He testified that he noticed marks on Delicato's face and hands, but the bulk of his testimony centered around the noises he heard coming from upstairs most nights between 11pm and midnight:

> Q: Ce bruit-là chez elle est-ce que cela est arrivé souvent?
> R: Cela est arrivé très souvent, certainement, presque tous les soirs. […] on entendait assez que cela nous réveillait du moment que le mari de la demanderesse arrivait et qu'il commençait le train. Nous autres, nous avons une grosse famille, il faut se lever de bonne heure le matin et on se couche de bonne heure pour se reposer. Du moment que le mari de la demanderesse entrait dans la maison, on entendait le train. Même, il allait jusqu'à casser la vaisselle; il jetait tout à terre dans la maison, il frappait partout.
> […]
> Q: Avez-vous entendu la demanderesse se plaindre?
> R: Oui, monsieur, je l'ai entendu se plaindre; elle lamentait; il la jetait par terre; elle se lamentait en disant: "Oh! dear! dear![79]

Delicato was ultimately convinced by her brothers-in-law to drop her suit.[80] When asked how this affected her relationship with her husband, she said, "He treated me well for a little while, and then he was worse than before. Finally he left the City […] I think I am much better alone than to live with a man like him, and I do not want to see him at all nor do I want to ask him for any help".[81] She received a telegram from someone she believed to be her husband two months after he left, which when roughly translated by Delicato from Italian to English said, "Poor fool, you will not be able to arrest Cecillo, he is alright where he is, he has fooled you,

[77] *Elizabeth Delicato v. Francesco Mandato,* 1905.
[78] *Elizabeth Delicato v. Francesco Mandato,* 1905.
[79] *Elizabeth Delicato v. Francesco Mandato,* 1905.
[80] *Elizabeth Delicato v. Francesco Mandato,* 1905.
[81] *Elizabeth Delicato v. Francesco Mandato,* 1905.

[…]".[82] These were the circumstances which influenced her to proceed with another separation attempt in 1905, which ended up being successful.

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Overall, obtaining a divorce was nearly impossible in the province of Quebec. Instead, unhappy couples wishing to separate could only do so based on the specific grounds outlined in the Civil Code. Many barriers, such as the financial aspect of the process, prevented women from initiating a suit, to which the *in forma pauperis* clause was a major source of hope. Once they were authorized to proceed with a trial, however, the documents that made up their case, and the duration of the action itself varied. What, then, were the main reasons individuals cited for separation? How do these reasons look when broken down by gender? In addition, how might other concerns, such as property and child custody come into play in a separation trial? The following chapter aims to cover these aspects in more detail while also providing a gendered analysis.

[82] *Elizabeth Delicato v. Francesco Mandato,* 1905.

Chapter 2: Underlying Causes and Concerns

In her research, Quebec historian Marie-Aimée Cliche points out that women were the overwhelming majority of those who initiated the filing for separation consistently throughout the nineteenth and early twentieth century in Montreal.[1] My research also aligns with these findings as 89% of the cases I examined were initiated by women while only 11% were initiated by men. Regardless of what gender the plaintiff was, the ultimate catalyst for separation was when their partner's action or inaction deviated from their assigned gender role. In this particular collection of cases,[2] it was most common for couples to separate during their first ten years of marriage: 43% of these couples separated after being married between one and five years (see figure 4). Relatedly, table 2 depicts the factors cited as reasons for separation in descending order of frequency. The following sections will discuss these factors and their implications in further detail.

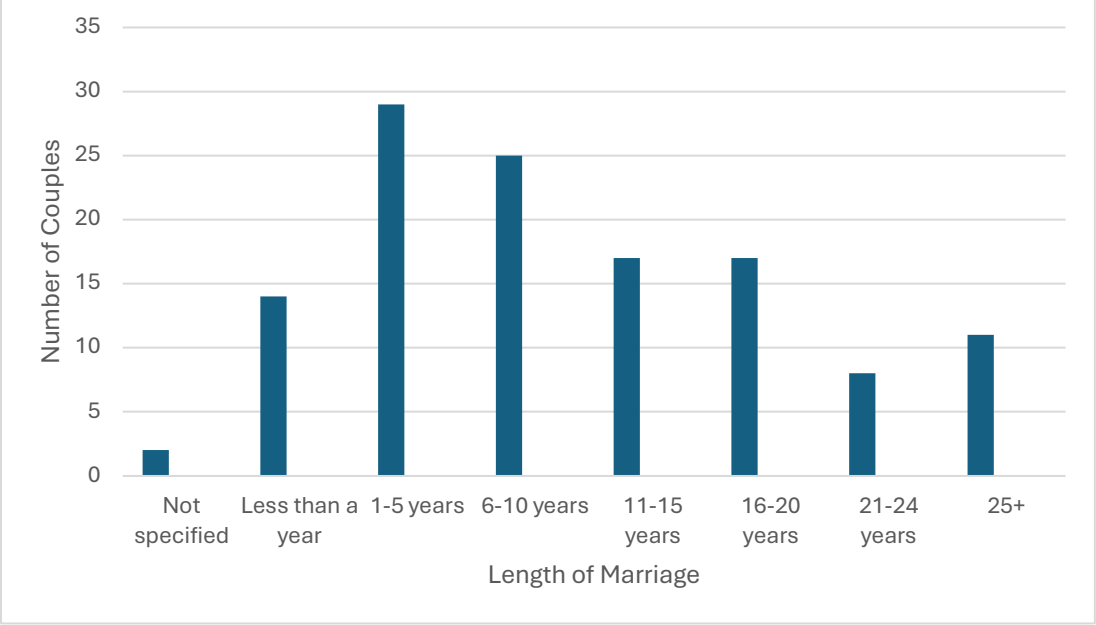

Figure 4: Length of Marriage Before the Action

[1] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 79.
[2] Excluding two cases whose length of marriage is not specified.

Table 2: Factors (all cases)

Factors	Frequency	Percentage
Abuse	99	81.2%
Alcoholism	52	42.9%
Does Not Provide	35	28.9%
Abandonment	25	20.7%
Adultery	24	19.9%
Gambling	2	1.7%
Sexual Deficiency	1	0.8%
Incest	1	0.8%

Table 3: Factors (cases initiated by men)

Factors	Frequency
Abuse	7
Alcoholism	6
Adultery	5
Abandonment	2
Incest	1

Table 4: Factors (cases initiated by women)

Factors	Frequency
Abuse	92
Alcoholism	46
Does Not Provide	35
Abandonment	23
Adultery	19
Gambling	2
Sexual Deficiency	1

Alcoholism, Abuse, and Failing to Provide

Drinking culture among the working-class of late nineteenth-century Montreal was very strong.[3] As a matter of fact, in 1870, it is estimated that there was one tavern for approximately every 143 inhabitants, the most famous being Joe Beef's Canteen.[4] For men, Joe Beef's Canteen

[3] Harvey, "To Love, Honour and Obey," 131.
[4] Harvey, "To Love, Honour and Obey," 131.

represented more than just a drinking spot; it was a source of support during hard times.[5] Taverns and saloons in general represented a space where working-class men could build their identity and forget about their issues that stemmed from capitalist management.[6] Saloons were a place where men found themselves on an equal footing with everyone since they could all relate to the demands of work and family.[7] Their wives, on the other hand, viewed such places as a hub for trouble.

Alcohol was often a point of contention between husbands and wives. From the husband's point of view, he had the freedom to spend *his* money in whatever way he pleased.[8] This was frustrating for wives since alcohol was an expense that strained her family's careful budget.[9] Not only would husbands drink their money away in bars or at home, but drinking was also closely related to gambling, another slippery slope.[10] However, as Mary Anne Poutanen has observed, there was a large presence of unmarried women who ran taverns in Montreal, which further complicates this dynamic.[11] These women did not think of the tavern as the antithesis of the home, but instead found an interest in blending their gender role in unanticipated spaces.[12] Be that as it may, there was certainly a trade-off: spending money on alcohol meant sacrificing food on the table and paying bills on time.[13]

This concern was voiced in the 1895 Report of the Royal Commission on the Liquor Traffic in Canada. Although it acknowledges that the proportion of liquor consumption and

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[5] Peter DeLottinville, "Joe Beef of Montreal: Working-Class Culture and the Tavern, 1869-1889," *Labour / Le Travail* 8/9 (Autumn 1981 / Spring 1982): 10.
[6] Craig Heron, *Booze: A Distilled History* (Toronto: Between the Lines, 2003), 114.
[7] Heron, *Booze,* 118 and 120.
[8] Harvey, "To Love, Honour and Obey," 132.
[9] Harvey, "To Love, Honour and Obey," 132.
[10] Savoie, "Women's Marital Difficulties", 477.
[11] Mary Anne Poutanen, " 'Due Attention Has Been Paid to All Rules': Women, Tavern Licenses, and Social Regulation in Montreal, 1840-1860," *Histoire sociale / Social History* 50, no. 101 (2017): 44-45.
[12] Poutanen, "Due Attention Has Been Paid to All Rules," 45.
[13] Harvey, "To Love, Honour and Obey," 132.

pauperism in Canada was lower compared to other countries during this time, the report also sheds light on the tight budget that forms when the cost of living and average earnings were about the same.[14] As a result, the report labels alcohol as a needless expense contributing to poverty: "all the facts ascertained go to show that in about the same degree as in other lands [pauperism] is traceable to intemperance".[15] Moral reformers embraced the same view and insisted that men's wages should be spent on their families and not in saloons.[16]

It is worth noting that not all men who drank were problematic, but the minority who were stirred up a great deal of concern for those surrounding them.[17] This defined Marie Louise Boivin's life as she filed for separation of bed and board from her husband Jules Joseph Sévère Gélinas in 1902 on the grounds that his alcoholism had hindered his ability to provide for his family. He also later abandoned his family completely by moving to the United States, leaving his wife with only $150.00 to her name.[18] As a result of Gélinas' actions, Boivin claimed that she had no other choice but to take her children and move in with her father, Irénée Boivin. It was common for women to turn to their extended families in times of desperation, but as historian Kathryn Harvey points out, this was merely a short-term solution.[19] Space was already limited in working-class housing to begin with, which made the addition of another family difficult.[20] At any rate, in his official deposition, Mr. Boivin testified that although he always found Gélinas' alcohol consumption strange, he ignored the severity of his addiction until 1894, when he became increasingly concerned about his behaviour. Furthermore, when asked if he thought that

[14] Canada. Privy Council Office, *Report of the Royal Commission on the Liquor Traffic in Canada,* Joseph Hickson et al., Ottawa: S.E Dawson, printer, 1895, 510 and 512, https://publications.gc.ca/site/eng/9.824439/publication.html
[15] Canada, *Report of the Royal Commission on the Liquor Traffic in Canada,* 512.
[16] Heron, *Booze,* 121.
[17] Heron, *Booze,* 121.
[18] BANQ-Vieux Montreal, Superior Court District of Montreal, *Marie Louise Boivin v. Jules Joseph Sévère Gélinas,* 1902.
[19] Harvey, "To Love, Honour and Obey," 135.
[20] Harvey, "To Love, Honour and Obey," 135.

Gélinas provided for his family, Mr. Boivin answered in the negative as he stated, "Non […] depuis mil huit cent quatre vingt quatorze, il n'a presque rien donné […]".[21] He followed this up by saying that he had been "completely" supporting his daughter and grandchildren since they moved in with him, including investing in their education.[22] Mr. Boivin's deposition also revealed that he had five or six interactions with the defendant after he abandoned his daughter and did not believe that Gélinas' addiction had diminished.[23] In another deposition, J.M. Wilson – whose relationship to the parties is unclear – said that he had seen the defendant four or five times after leaving for the United States and claimed that each time he saw him, his addiction looked like it was taking a turn for a worse, going as far as saying that "il avait l'air d'un véritable tremp".[24]

The marriage of Blanche Rajotte and Arthur Dubé followed a similar trend. In addition to abuse (discussed below), Dubé's excessive drinking was problematic for Rajotte because of the financial strain it imposed on their relationship.[25] Rajotte testified in 1915 that her husband refused to give her any money to buy household essentials, and instead would spend it on alcohol or gamble it away; "J'ai besoin de mon argent pour jouer aux cartes, et dans le futur, tu n'en auras jamais".[26] As a result, Rajotte was forced to seek additional income by running a boarding house in order to make ends meet and buy furniture herself.[27] However, her success was short lived since her husband kicked out the only boarder she hosted and forbade his return.[28]

[21] *Marie Louise Boivin v. Jules Joseph Sévère Gélinas,* 1902.
[22] *Marie Louise Boivin v. Jules Joseph Sévère Gélinas,* 1902.
[23] *Marie Louise Boivin v. Jules Joseph Sévère Gélinas,* 1902.
[24] *Marie Louise Boivin v. Jules Joseph Sévère Gélinas,* 1902.
[25] BANQ-Vieux Montreal, Superior Court District of Montreal, *Blanche Rajotte v. Arthur Dubé,* 1915.
[26] *Blanche Rajotte v. Arthur Dubé,* 1915.
[27] *Blanche Rajotte v. Arthur Dubé,* 1915.
[28] *Blanche Rajotte v. Arthur Dubé,* 1915.

In another case that took place in 1905, Arthur Bourdon went as far as stealing money from his wife, Philomène Auger, to buy alcohol.[29] Auger complained that "[Bourdon] boit et il ne travaille pas; il a voulu m'oter mon argent et il n'a jamais voulu travailler, il a dit qu'il ne travaillerait pas".[30] Therefore, the excessive consumption of alcohol that led to a husband's failure to provide for his family was a significant burden to marriages since it undermined the established set of gender relations, leaving wives with only one option to avoid poverty: entering the workforce.[31] Considering how important gender roles were to the functioning of the family, this role reversal was not well-received by society nor by women themselves, as one woman stated, "Quand on prend une femme, ce n'est pas pour la faire travailler".[32]

Moreover, domestic violence was also a more severe issue linked to alcohol consumption. In Montreal in the 1870s, "wife-battering," as it came to be known, quickly escalated into a public concern.[33] In conformity with the stereotype of being submissive, women were not expected to retaliate, not only because it would be unwomanly, but also because any action from their end would be a direct challenge to masculine authority.[34] According to these case files, alcohol was the underlying factor in the majority of wife-battering cases, which provides a context for the increasing presence of feminist and temperance movements during this time.[35] Men would drink and become violent with their wives, but would hypocritically claim their innocence by saying the alcohol made them act that way.[36] Historian Craig Heron points out that courtroom testimonies revealed that these incidents often stemmed from ongoing conflict

[29] BANQ-Vieux Montreal, Superior Court District of Montreal, *Philomène Auger v. Arthur Bourdon*, 1905.
[30] *Philomène Auger v. Arthur Bourdon*, 1905.
[31] Harvey, "Amazons and Victims," 135-136.
[32] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 87.
[33] Harvey, "To Love, Honour and Obey," 129.
[34] Harvey, "Amazons and Victims," 137-138.
[35] Harvey, "To Love, Honour and Obey," 129-131.
[36] Harvey, "To Love, Honour and Obey," 131.

within the household relating to the husband's responsibility to provide and/or the wife's duties as a housekeeper.[37]

Violent outbursts under the influence of alcohol were another topic addressed in the 1895 Report of the Royal Commission on the Liquor Traffic in Canada, which states, "Drunkenness excites the instinct of destructiveness and thus becomes a direct cause of violence and often of wholly unprovoked assaults. Inebriety clouds the perceptive faculties and thus disqualifies its victims for judging the consequences of their acts or realizing the force of dissuasive arguments".[38] The language in this report aligns with the view that men were not inherently violent, but that alcohol made them act violently. But was that really a viable excuse to demonstrate a wildly inappropriate form of dominance over women?

Consider the case of Marie-Louise Gauthier who filed for separation of bed and board from her husband, Alfred Roussille in 1908. In her declaration, Gauthier disclosed that her husband would come home intoxicated and abuse her, on average, two or three times a week over the span of one year.[39] Under the influence of alcohol, Roussille called her derogatory names such as "maudite chienne" and "maudite putain," threatened her with a knife, and once grabbed her forcibly by the arm and threw her out of the house.[40] In a similar situation, Olivine Cloutier resorted to jumping out of the second floor of her house to avoid her husband's attempt to kill her with a knife.[41] Another case worth considering is that of *Elizabeth Brash v. James Campbell Boyd*, which took place in 1912. Boyd was another frequent drinker who would abuse his wife when drunk.[42] He had hit, insulted, and even on one occasion "[dragged] her through the

[37] Heron, *Booze,* 124-125.
[38] Canada. *Report of the Royal Commission on the Liquor Traffic in Canada,* 523.
[39] BANQ-Vieux Montreal, Superior Court District of Montreal, *Marie-Louise Gauthier v. Alfred Roussille,* 1908.
[40] *Marie-Louise Gauthier v. Alfred Roussille,* 1908.
[41] BANQ-Vieux Montreal, Superior Court District of Montreal, *Olivine Cloutier v. Joseph Stanislas Quenneville*, 1901.
[42] BANQ-Vieux Montreal, Superior Court District of Montreal, *Elizabeth Brash v. James Campbell Boyd,* 1912.

street in front of their home, tearing her clothes".[43] Amanda Pelland's case also contributes to this discussion since her abusive and frequently intoxicated husband, Pierre Caisse, pushed her down the stairs which caused her to have a miscarriage in 1875.[44] These four cases only begin to scratch the surface of the ghastly treatment of women at the hands of their drunken husbands during this time. Alcohol was not an excuse for the excessive abuse that these women had to endure; the relationship between alcohol abuse and domestic abuse was a pawn in the larger game of demonstrating dominance over women.

Although women represented the majority of plaintiffs in these cases, it is critical not to overlook the fact that sometimes men were victims of abuse as well. In general, the responsibility to care for children and having limited access to money meant that women drank less than men.[45] But in instances where this norm was broken, alcohol proved to be just as much of a "social evil"[46] for women as it was for men. While there are only thirteen separation cases initiated by men in this collection, seven cite abuse, five of which also cite alcoholism. Mathias Sauvé was one such husband who, in 1904, filed for separation of bed and board from his wife, Délia Hébert, after only two months of marriage. In his declaration, Sauvé described his wife as a "habitual drunkard," who abused him numerous times, and had even threatened to kill him and his family with an axe.[47] Georges Grenier was another man who suffered at the hands of his wife Herméline Lepine.[48] Grenier testified that his wife would drink in excess and abuse him, and that the scar on his face was from the time that she attacked him with a knife.[49] Hébert and Lepine's actions were resentful. They also represent a total inversion of the gender expectations set up for

[43] *Elizabeth Brash v. James Campbell Boyd,* 1912.
[44] BANQ-Vieux Montreal, Superior Court District of Montreal, *Amanda Pelland v. Pierre Caisse,* 1912.
[45] Harvey, "To Love, Honour and Obey," 132.
[46] Canada. *Report of the Royal Commission on the Liquor Traffic in Canada,* 553.
[47] BANQ-Vieux Montreal, Superior Court District of Montreal, *Mathias Sauvé v. Délia Hébert,* 1904.
[48] BANQ-Vieux Montreal, Superior Court District of Montreal, *Georges Grenier v. Herméline Lepine,* 1892.
[49] *Georges Grenier v. Herméline Lepine,* 1892.

women at the time. Whether their actions were meant to intentionally reflect this or not remains a matter of speculation. However, it *is* fair to assume that turning to alcohol abuse could have been one way that men or women alike dealt with the pressures that came along with their respective gender roles and life circumstances more generally.

When fearing for their lives, spouses had the option to turn to the police, but in practice, this was not necessarily the most effective solution. In the early twentieth century, the security benchmark set one police officer for every 1000 residents. In 1875, however, Montreal only had a total of 38 policemen for a population of 160,000, which roughly equates to a ratio of 1:4210.[50] Merion Fitzallen was lucky that the police of the town of Saint Louis (which later became the Saint-Louis Ward of Montreal), were able to come to her aid on multiple occasions when she needed safety from her abusive husband, Dr. William Henry D. Young. Joseph A. Clermont, the chief police officer of the town of Saint Louis, testified the following in their separation trial:

> Nous avons été souvent appelés chez le Docteur Young le jour et la nuit. Il y avait très souvent des querelles qui survenaient entre les époux, le jour et la nuit. Je suis arrivé là lorsque le Docteur Young tenait un revolver à la main, il tenait un revolver sur lui continuellement. On est arrivé là et il tirait par les chassis, cela est arrivé plusieurs fois. Je me suis adonné à passer sur la rue Sanguinet et j'ai vu le docteur Young dans le chassis qui tirait des coups de revolver. […] j'ai dit à Mme Young: 'Je suis fatigué d'avoir ces rapports-là, si vous n'êtes pas capable de vivre ensemble, séparez-vous donc'.[51]

Fitzallen was eventually granted separation, but Clermont's response of, "séparez-vous donc," is riddled with ignorance of the sociopolitical and economic factors that deterred women from receiving separations at the time. Malvina Ducré's case also sheds light on the oppressive forces that worked to counteract female agency. In 1909, after 35 years of marriage, Ducré filed for separation of bed and board *in forma pauperis* from her husband, Charles Moisan, who was

[50] Harvey, "To Love, Honour and Obey," 135.
[51] BANQ-Vieux Montreal, Superior Court District of Montreal, *Merion Fitzallen v. William Henry D. Young,* 1898.

in prison during the time of their trial.[52] He had received four years for the attempted murder of his wife, having grabbed her by the mouth and shot her with a pistol, which resulted in two broken teeth and brain damage, and another six months for assaulting his children.[53] Ducré was granted separation from Moisan but her case reveals the paradox of her situation – and that of many other women – which Harvey sheds light on: "[a] husband's imprisonment put an end to the abuse but it also deprived a wife of an important source of income".[54] The constraints of Montreal's society at the time made it so that women could not afford to be without their abusive husbands without risking poverty and hunger.[55] This was one of the many fears and deterrents that kept women away from the courtroom.[56] There was also the menacing deciding factor of whether or not the offence took place in private or in public.[57] Joseph Frémont's legal treatise about divorce and separation of bed and board reveals that having suffered abuse in public increased the severity of the case because of the presence of witnesses. He follows this up by stating that, in contrast, the severity of cases decreases when they took place in areas with less publicity, such as "dans le secret de la famille".[58] Although Frémont was writing in 1886, this is still a pertinent and relevant issue in our present-day society. The validity of private domestic abuse cases like these – "your word against mine" – becomes a question of hoping the evidence is strong enough so the judge will be on your side. The issue lies in the fact that in nineteenth and twentieth-century Quebec, men dominated women in every aspect of the word, so it was

[52] BANQ-Vieux Montreal, Superior Court District of Montreal, *Malvina Ducré v. Charles Moisan,* 1909.
[53] *Malvina Ducré v. Charles Moisan,* 1909.
[54] Harvey, "Amazons and Victims," 140.
[55] Harvey, "Amazons and Victims," 140-141.
[56] Harvey, "Amazons and Victims," 139.
[57] Frémont, *Le divorce et la separation de corps,* 74.
[58] Frémont, *Le divorce et la separation de corps, 84-85.*

legitimate for women to fear that their voices would not be heard and that their trauma would not be recognized.

Adultery

As mentioned in the previous chapter, under the Civil Code, adultery was considered a serious matter that provided grounds for separation. However, there was a double standard at play since it was harder for a woman to obtain a separation on the basis of her husband's adultery than the other way around. Considering these circumstances, it is not surprising that when making their case, women often listed adultery as *one* of the reasons why they deserved separation and not the sole reason. For instance, in eighteen out of the nineteen cases (see table 4) in which women listed adultery as a reason for separation, it was paired with other factors. On the other hand, it is surely no coincidence that adultery was listed as the sole reason for separation in three out of the five adultery cases initiated by men (see table 3).

To put the double standard into perspective, I will compare two separation cases – the former initiated by a woman and the latter by a man. In 1902, Rose de Lima Pigeon filed for separation of bed and board from her husband Michel Dupré on the grounds that he was abusive – going as far as threatening her with a revolver – did not provide for her, and committed adultery.[59] In her declaration, Pigeon testified that her husband had contracted a sexually transmitted infection from his extramarital affair, which he passed onto her, and even attempted to remarry despite the fact that she was still alive.[60] In contrast, Zotique Labelle filed for separation from his wife Albina Roy in 1888, on the grounds that she had been having an affair

[59] BANQ-Vieux Montreal, Superior Court District of Montreal, *Rose de Lima Pigeon v. Michel Dupré,* 1902.
[60] *Rose de Lima Pigeon v. Michel Dupré,* 1902.

with another man.[61] In terms of consequences, committing adultery did not change anything on paper for the husband, but the wife would lose her matrimonial rights and privileges to her dowry and half of the community of property.[62] These are the consequences that Roy would face, while abuser Dupré would walk away without being reprimanded as well. Thus, even though the transgression was the same, the penalty was much harsher for the wife.

Child Custody

Furthermore, a spouse's sexual integrity affected his or her right to child custody. Article 214 of the Civil Code states that children were entrusted to the party who obtained the separation, given that this is in the child's best interest.[63] Otherwise, the court reserved the right to transfer the responsibility for childcare to the other spouse or to a third party.[64] Cases where both spouses were in the wrong made this decision particularly difficult for judges. But the provisions outlined in the Civil Code almost always ensured that judges were able to find one spouse less guilty than the other and grant them child custody.[65] The practice of granting child custody to the "innocent" party is inspired from French Law dating back to the seventeenth century.[66] The logic behind this stipulation was that if the losing party could not fulfill their obligations as husband or wife, what is to say they will be a good parent?[67] It also had to do with setting a proper example for the child, which explains why a parent found guilty of adultery, generally, would be unsuccessful in obtaining custody.[68] This held true for Jessie Rémillard who lost her child custody battle against

[61] BANQ-Vieux Montreal, Superior Court District of Montreal, *Zotique Labelle v. Albina Roy,* 1888.
[62] Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," 25.
[63] Québec, *Civil Code of Lower Canada,* art. 214.
[64] Québec, *Civil Code of Lower Canada,* art. 214.
[65] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 95.
[66] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," *9*5.
[67] Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," 28.
[68] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 94.

her husband, Moïse Brousseau, in 1888.[69] Rémillard filed for child custody of her 10 year-old son, Joseph, during her separation trial as she claimed that Brousseau was abusive and a frequent drinker.[70] However, Brousseau delivered a surprising rebuttal to her allegations. He declared that if anything, *he* should be the one suing *her* for separation since she had been living a life that his lawyers described as "déréglée et scandaleuse" since she left their home to live with another man.[71] Brousseau followed this up by saying that because of her infidelity, he saw no reason to trust her with Joseph.[72] This allegation proved to be Rémillard's downfall as custody was given to Brousseau, and only allowed Rémillard bi-monthly visitation rights.[73]

According to article 200 of the Civil Code, during a separation trial, the father, whether plaintiff or defendant, was responsible for the care of his children.[74] However, as previously established, the overarching concern when it came to cases of child custody was that decisions had to be made in the child's best interest. This explains why the court had the right to reassign custody for the duration of the trial,[75] which, in this collection of cases, was only done once. This was the case of *Annie Mayers v. Max Bowman*, which took place in 1885. In her declaration, Mayers testified to her husband's relentless abuse, and recalled one instance where he threw a coal oil lamp at her while she was nursing her baby, which "[…] struck [Mayers] and her baby with considerable force, inflicting upon them great pain and frightening and causing the said baby to scream and putting [Mayers] and the said baby in imminent danger of their lives".[76] While this case does not contain a final judgement, in light of this testimony, it is reasonable to

[69] BANQ-Vieux Montreal, Superior Court District of Montreal, *Jessie Rémillard v. Moise Brousseau,* 1888.
[70] *Jessie Rémillard v. Moïse Brousseau,* 1888.
[71] *Jessie Rémillard v. Moïse Brousseau,* 1888.
[72] *Jessie Rémillard v. Moïse Brousseau,* 1888.
[73] *Jessie Rémillard v. Moïse Brousseau,* 1888.
[74] Québec, *Civil Code of Lower Canada,* art. 200.
[75] Québec, *Civil Code of Lower Canada,* art. 214.
[76] BANQ-Vieux Montreal, Superior Court District of Montreal, *Annie Mayers v. Max Bowman,* 1885.

assume that Mayers was granted temporary custody because Bowman's actions had previously threatened the baby's safety.

Moreover, my research aligns with that of Cliche who observed that since women were the majority of those filing for separation, more often than not, they were also granted custody over their children.[77] This is especially interesting considering the fact that Common Law provinces, like Ontario, recognized the father's nearly absolute right over their children until the mid to late nineteenth century.[78] Historian Cynthia S. Fish also recognizes this phenomenon as she argues that starting in the 1890s, judges increasingly tended to recognize children's emotional needs.[79] In doing so, they began to reevaluate a father's ability to care for his child while also being the head of the family and the primary wage earner.[80] On the other hand, the prospect of raising children was viewed as natural for women, and as something that could be managed with their domestic responsibilities.[81] For these reasons, Fish reveals that judges became more inclined to grant women child custody privileges than men.[82] It is important not to mistake these trends as progressive, however, since the extension of custody rights to mothers was created with the sole intention of protecting children, not with the purpose of advancing women's rights.[83]

[77] Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," 29.
[78] Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," 30.
[79] Cynthia S. Fish, "La puissance paternelle et les cas de garde d'enfants au Québec, 1866-1928," *Revue d'histoire de l'Amérique française*, *57*(4), (2004): 532.
[80] Fish, "La puissance paternelle," 530.
[81] Fish, "La puissance paternelle," 532.
[82] Fish, "La puissance paternelle," 532-533.
[83] Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," 30.

Alimony

Alimony is another common request viewed in separation cases. It was within a spouse's right to request alimony under article 213 of the Civil Code which states, "Either of the parties thus separated, not having sufficient means of subsistence, may obtain judgement against the other for an alimentary pension, which is fixed by the court, according to the condition, means and other circumstances of the parties".[84] According to my research, over half of the women who filed for separation of bed and board also filed for alimony, which is reasonable to infer considering their dependent status to their husbands.[85] As such, it was common for women to pair their request for child custody with alimony since under article 215 of the Code, the party entrusted with the child was responsible for their upbringing and education.[86] Not surprising is the fact that no men are present in this collection of data requesting alimony, which reinforces their role as providers, not dependants.

Even though alimony was granted the majority of the time, there is a distinct trend present between these two categories. When women filed for alimony but not child custody, the proposed sum was often lowered before it was granted. This was the case for Albertine Ladouceur, who filed for separation of bed and board from her husband, Charles Lefebvre, in 1896, on the grounds that he was abusive and an alcoholic.[87] With no children resulting from this marriage, Ladouceur, aged 21, also sued for an alimentary pension of $40.00 per month.[88] Her declaration stated that she was poor and her husband was rich, and while it is not explicitly mentioned, it is fair to assume that it was because she did not work throughout the year they

[84] Québec, *Civil Code of Lower Canada,* art. 213.
[85] Excluding two cases whose motions were desisted, 33 out 65 cases initiated by women saw the request for alimony alone and an additional 30 requested alimony alongside child custody.
[86] Québec, *Civil Code of Lower Canada,* art. 215.
[87] BANQ-Vieux Montreal, Superior Court District of Montreal, *Albertine Ladouceur v. Charles Lefebvre,* 1896.
[88] *Albertine Ladouceur v. Charles Lefebvre,* 1896.

were married. The following excerpt is from the deposition of Emilia Joint, a witness produced for the plaintiff:

> Q: Et n'est-il pas vrai que [Ladouceur] ne travaillait pas, qu'elle ne faisait rien du tout?
> R: [Lefebvre] ne voulait pas qu'elle fasse rien, qu'elle touche à rien, il disait qu'il n'avait rien à elle là.[89]

This testimony highlights a very important point brought up by Cliche: husbands refused to let their wives work when they lived together but backtracked on their stance when it came to the discussion of alimony during separation trials.[90] Instead, they tried to prove that their wives were perfectly healthy and capable of making a living on their own.[91] Judges shared this view as well, especially when it came to women who did not have any children.[92] As a result, Ladouceur was ultimately granted separation from her husband, but was limited to only receive $25.00 per month in alimony.[93]

Ernestine Vallée faced a similar situation when she filed for separation of bed and board from her husband Dolphis Roch in 1906 because he was abusive, did not provide for her, forced her to work, and ultimately abandoned her and their child to live with his mistress.[94] Vallée also sued for $30.00 per month in alimony from her husband.[95] Vallée's case is different than Ladouceur's because she was a mother, but also because she testified that as a result of her husband's ineptitude, she had been working for 15 years.[96] Therefore, it is possible that the judge in this case only reduced her monthly alimony to $25.00 per month because of the fact that she proved she was able to provide for herself, but did not reduce it any further for the sake of her

[89] *Albertine Ladouceur v. Charles Lefebvre,* 1896.
[90] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 87.
[91] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 87.
[92] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 87.
[93] *Albertine Ladouceur v. Charles Lefebvre,* 1896.
[94] BANQ-Vieux Montreal, Superior Court District of Montreal, *Ernestine Vallée v. Dolphis Roch,* 1906.
[95] *Ernestine Vallée v. Dolphis Roch,* 1906.
[96] *Ernestine Vallée v. Dolphis Roch,* 1906.

child. This discrepancy reflects the idea that while the law was not set up to protect women's best interests, some leeway was given to women if they were mothers. This once again reinforces just how family-centered Quebec law was at the time, with little mercy shown to childless married women.

Even more, it was possible for a husband to completely overcome his obligation to provide alimony by proving his wife's infidelity.[97] This was the case for Arthur Howe Hersey who sued his wife, Eliza Jane Barry, for separation in 1902 on the basis that she had committed adultery.[98] The couple had agreed to live apart since 1901 and Barry was granted an alimony of $30.00 per month from Hersey.[99] However, Hersey eventually found out that Barry had left the domicile where the court had authorized her to live and instead had "been living in adultery" with another man.[100] Barry's actions violated the rights and duties for a wife outlined in the Civil Code. As a result of her noncompliance, Hersey no longer felt the obligation to financially support her.[101] The court agreed and rendered the decision in his favour.

Considering that it was absolutely essential to the survival of separated women, money played a role in virtually every case, but some more than others. This especially held true for mothers and for women who were unable to work due to illness. After spending one year in a healthcare facility battling a brain disease, Belzémire Massé was prevented by her husband, J.B. Edmond Bédard, from returning to their home upon her recovery.[102] Bédard's actions left Massé in a dire situation. Not only was she unable to return home to her husband and children, but her declaration also stated that she had become ill again and was unable work as a result.[103] These

[97] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 89.
[98] BANQ-Vieux Montreal, Superior Court District of Montreal, *Arthur Howe Hersey v. Eliza Jane Barry,* 1902.
[99] *Arthur Howe Hersey v. Eliza Jane Barry,* 1902.
[100] *Arthur Howe Hersey v. Eliza Jane Barry,* 1902.
[101] *Arthur Howe Hersey v. Eliza Jane Barry,* 1902.
[102] BANQ-Vieux Montreal, Superior Court District of Montreal, *Belzémire Massé v. J.B. Edmond Bédard,* 1894.
[103] *Belzémire Massé v. J.B. Edmond Bédard,* 1894.

are the circumstances that led her to file for separation as well as an alimentary pension of $12.00 per month. For Massé, it is undeniable that this amount was absolutely fundamental to her survival after essentially being forced to start her life from scratch.

In this respect, alimony was a symbol that even after legal separation, the husband continued to assume his role as his wife's provider of income.[104] Consequently, this meant that separated women had the reality of not being financially independent constantly hanging over their heads.[105] To make matters worse, alimony was not as secure of an obligation as others since it was dependent on a variety of factors including circumstances, needs, and available resources.[106] One case that demonstrates such shortcomings is that of *Eva Vadnais v. Albert Smith.* After the court pronounced the couple separate as to bed and board in 1903, Smith was ordered to provide his wife with $20.00 worth of alimony per month.[107] However, six months after the ruling, the court assigned a bailiff to the case since Smith had failed to pay Vadnais.[108] The uncertainty in something as important as alimony is quite disconcerting. For Vadnais, this absence of income had serious implications since she declared that she was of poor health and could not work to sustain a life for herself and her young child.[109] Cases like Vadnais' reveal the importance of alimony to married women seeking separation: without alimony, they would not be able to survive, but staying with their husbands posed the exact same threat.

[104] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 89.
[105] Thierry Nootens, *Genre, Patrimoine et Droit Civil: Les Femmes Mariées de La Bourgeoisie Québécoise En Procès, 1900-1930* (Montreal: McGill-Queen's University Press, 2018), 162-163.
[106] Nootens, *Genre, Patrimoine et Droit Civil,* 162-163.
[107] BANQ-Vieux Montreal, Superior Court District of Montreal, *Eva Vadnais v. Albert Smith,* 1903.
[108] *Eva Vadnais v. Albert Smith,* 1903.
[109] *Eva Vadnais v. Albert Smith,* 1903.

Property

Examining marriage contracts, customs, and property regimes showcases the precarious situation that married women were in under Quebec law. In nineteenth-century Quebec, signing a marriage contract was rather uncommon. Those who opted to do so were often "bourgeois" or "écuyer"[110] like nobleman, Rosario Fortier, who married his wife, Marie Louise Boudrias under the separation of property regime in 1909.[111] Fortier and Boudrias were one of only six couples in this collection of 121 cases who had opted for separation of property. This regime was beneficial for spouses who sought to protect their goods against the other's creditors or wanted to keep their property within their family line.[112] Also commonly viewed in this category were farmers, whose livelihoods were based on ownership of property, for example.[113] There was also a strong correlation between culture and the type of regime chosen. For instance, nine out of ten English Protestant couples chose to keep their respective property separate.[114] On the other hand, the community of property regime had been well-established in Lower Canada since the early colonial period,[115] which explains why it was chosen by the vast majority of French-Canadian couples when creating a marriage contract.[116]

However, the majority of couples getting married in Montreal did not sign a marriage contract, which automatically established a community of property.[117] In the words of historian Bettina Bradbury, this "customary patriarchy" ensured the legal and equal sharing of any property brought into the marriage by both spouses but only gave the husband the right to

[110] Bettina Bradbury et al., "Property and Marriage: The Law and the Practice in Early Nineteenth-Century Montreal," *Social History / Histoire Sociale* 26, no. 51 (May 1993): 15.
[111] BANQ-Vieux Montreal, Superior Court District of Montreal, *Rosario Fortier v. Marie Louise Boudrias,* 1915.
[112] Bradbury et al., "Property and Marriage," 22.
[113] Bradbury et al., "Property and Marriage," 15.
[114] Bradbury, *Wife to Widow,* 74.
[115] Bradbury et al., "Property and Marriage," 18.
[116] Bradbury, *Wife to Widow,* 63.
[117] Bradbury et al., "Property and Marriage," 15-16.

administer it.[118] This was another legal provision implemented into the Civil Code from the Custom of Paris.[119] This included moveable property (e.g. wages, animals, clothing), real property (e.g. land, house, crops), as well as income derived from inherited properties.[120] Men dominated under this regime since they had absolute power over the community of property.[121] Married women could not even sell any of their inherited property without their husband's permission.[122] Again, the pressing issue at hand with this property regime was that any irresponsible behaviour on the husband's part put his wife in a very vulnerable situation. As Bradbury points out, "[Husbands] could ruin or increase assets, and, unless they were certifiable as a drunkard or insane, or agreed to separate their goods through the courts, wives had little recourse".[123]

To expand on Bradbury's lattermost point, the fact that separation of property was an automatic result of separation of bed and board meant that women were able to rid themselves of another tie linking them to their husbands.[124] As referred to in chapter one, article 208 of the Civil Code states that separation of bed and board involved the dissolution of the community of property, which entitled women to their dowry and any property that they brought into the marriage.[125] In order to divide up the couple's assets, an inventory of goods under the community of property had to be made, which the Civil Code deemed as the husband's responsibility.[126] In the interest of equity, many instead turned to the services of a professional, like a notary, since the bias in the Code revealed itself in situations where the husband would

[118] Bradbury, *Wife to Widow,* 63.
[119] Young, *The Politics of Codification,* 145.
[120] Bradbury et al., "Property and Marriage," 16.
[121] Bradbury, *Wife to Widow,* 68.
[122] Bradbury, *Wife to Widow,* 68.
[123] Bradbury, *Wife to Widow,* 68.
[124] Gélinas, "La violence conjugale," 31.
[125] Québec, *Civil Code of Lower Canada,* art. 208.
[126] Québec, *Civil Code of Lower Canada,* art. 209.

unjustly delegate certain assets for personal gain.[127] In the event that this took place or as a preventative measure, the plaintiff, with permission of the court, could assign someone to seize control of the assets the defendant misappropriated, while the rest of the community of goods was placed under control of the court.[128] This is what Domithilde Gigard decided to do during her separation trial in 1885 since she was under the impression that her husband, Thomas Bissett, had tried to sell off property she brought into the marriage.[129] The earlier women took action, the better, but some did not always have this opportunity. For example, throughout their marriage, Eugénie Mimault's husband, Henri Ledoux, sold off some of the furniture in their community of property to buy alcohol.[130] Since this was done without her permission, Ledoux was in clear violation of the terms of the community of property. Therefore, Mimault's request for the court to seize and withhold the goods and properties of the community until it was dissolved ensured that her assets would not be misused any further.

If their property had already been sold to someone else, women could also file a garnishment order to obtain what was rightfully theirs from the third party. After abandoning his wife, Adèle Goudreau, on the seventeenth of October 1908, Joseph Hamois sold their house and all of its furniture without her knowledge or consent to Ludger Rousseau on the second of November 1908.[131] Goudreau believed that Hamois' intention was to defraud her of her rights to her property in the community of goods, which led her to request a garnishment order against Rousseau.[132] Still, Hamois' actions left Goudreau "[…] sans logement, sans nourriture, sans

[127] Gélinas, "La violence conjugale," 32.
[128] Gélinas, "La violence conjugale," 32-33.
[129] BANQ-Vieux Montreal, Superior Court District of Montreal, *Domithilde Gigard v. Thomas Bissett,* 1885.
[130] BANQ-Vieux Montreal, Superior Court District of Montreal, *Eugénie Mimault v. Henri Ledoux,* 1906.
[131] BANQ-Vieux Montreal, Superior Court District of Montreal, *Adèle Goudreau v. Joseph Hamois,* 1908.
[132] *Adèle Goudreau v. Joseph Hamois,* 1908.

argent et sans aucun meuble".[133] Goudreau's case highlights that taking action to claim or re-claim property was critical since an unequal share of the community of goods could be financially detrimental for a separated woman.[134]

It was also possible for women to file for separation of property only. For instance, there were 167 separation of property cases in the larger FDJQ database that did not necessarily reflect situations of failed marriages.[135] *Annie Stevenson Anderson v. David Morrice* was one such case. After his textile business began to fail, Anderson sued her husband, one of the wealthiest men in Montreal, for separation of property in November of 1884.[136] This case revealed to historians Peter Gossage and Lisa Moore that there were two categories of married women who filed for separation of property: those who were using the proceedings for their own individual agency and those who colluded with their husbands to protect their assets.[137] Anderson belonged to the latter as she willingly cooperated with her husband and his legal team to ensure the Morrice family fortune and privileged status.[138] Married women in the former category, such as Florida Gauthier, did not view their husband's situation as "simply *unfortunate*" but often explicitly blamed them for the poor management of their assets:[139] "Mon mari est un habile tailleur qui aurait pu faire de brillantes affaires, si sa passion pour les femmes et les cartes ne lui avait pas fait négliger sa clientèle".[140] In this sense, Gauthier and other married women used separation of property to protect themselves, and more often than not, their children as well.

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[133] *Adèle Goudreau v. Joseph Hamois,* 1908.
[134] Gélinas, "La violence conjugale," 34.
[135] Peter Gossage and Lisa Moore, "Marriage, Property, and the Law in a Square Mile Family: The case of Annie Stevenson Anderson vs. David Morrice, 1884-1885," in *Montreal's Square Mile: The Making and Transformation of a Colonial Metropole,* ed. Dimitry Anastakis, Elizabeth Kirkland, and Don Nerbas (Toronto; Buffalo; London: University of Toronto Press, 2024), 149.
[136] Gossage and Moore, "Marriage, Property, and the Law in a Square Mile Family," 160.
[137] Gossage and Moore, "Marriage, Property, and the Law in a Square Mile Family," 162.
[138] Gossage and Moore, "Marriage, Property, and the Law in a Square Mile Family," 163.
[139] Gossage and Moore, "Marriage, Property, and the Law in a Square Mile Family," 162-163.
[140] BANQ-Vieux Montreal, Superior Court District of Montreal, *Florida Gauthier v. Alphonse Lefebvre,* 1912.

Being declared separate as to property came with advantages and disadvantages for separated women. As historian Thierry Nootens points out, a separated woman could make a fortune from a wealthy community of property.[141] However, there were obstacles that prevented this from reaching its maximum potential. For example, wives could only claim property that they could prove was theirs, which excluded their husband's income or any other goods that they were more than likely to accumulate throughout the marriage, which placed a significant limit on their independence.[142] Even more, though technically separated women had the legal right to administer their property, in practice, their hands often proved to be tied by the power of patriarchy. Courts often struggled to determine exactly what these women were free to do with their property and still required a husband's authorization for everything except the purchase of household necessities.[143] The tensions between structure and agency, then, are illustrated by the fact that women were not allowed to govern their own property. Instead, they had limited control over the day-to-day administration of their property, which, in fairness, was a right that most other married women in Civil and Common Law jurisdictions did not have.[144] More significant was the fact that separated women no longer had the responsibility to guarantee their husband's debts, sacrifice their own assets to pay for them, or have their assets used to extend their husband's credit.[145] This came to the relief of Hannah Glickman, whose husband at the time (1902) was planning on fleeing to the United States to avoid paying his creditors.[146] Since she was married under community of property, filing for separation of bed and board, and by effect, separation of property, was likely done as a strategy to protect herself and her assets. Ultimately,

[141] Nootens, *Genre, Patrimoine et Droit Civil,* 148.
[142] Bradbury, *Wife to Widow,* 84.
[143] Bradbury et al., "Property and Marriage," 23.
[144] Bradbury et al., "Property and Marriage," 23.
[145] Bradbury et al., "Property and Marriage," 23.
[146] BANQ-Vieux Montreal, Superior Court District of Montreal, *Hannah Glickman v. Wolf Abraham Tolzes,* 1902

despite oppressive forces limiting absolute control over their property, women were able to obtain *some* agency by protecting their property from their husbands' misuse.

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In essence, when it came to separation actions there were many factors at play. When broken down by gender, the most commonly cited reasons for separation were abuse, alcoholism, and adultery. Women in particular also cited their husband's failure to provide as a motive for separation. Embedded within these issues are also questions of personal safety, the ability to be self-sufficient, happiness, and family dynamics, to name a few. This raises the question of the emotions and feelings that one might have felt before, during, and even after the trial. By examining separation cases as cases of wounded feelings, chapter three analyzes the social and emotional impact of these proceedings.

Chapter 3: Gender Dynamics and Emotions

From a retrospective point of view, it is easy to assume that filing for separation was an empowering action for women to take. Women breaking away from the stereotype of being submissive also meant that they were taking control of their lives for once, negotiating the fate of their future on their terms, and advocating for themselves and their children. As Alexia Cadieux explained in 1906, "J'ai besoin d'une séparation de corps judiciaire pour protéger ma santé et ma vie".[1] Be that as it may, when critically analyzed, it becomes evident that this process was both empowering and humiliating. Separation was a scandal for both parties involved, but women in particular faced exceptional prejudice. Many women were reluctant to file for separation of bed and board because of the harsh reality of the societal repercussions they would face. There was a negative connotation associated with separated women during this time since their departure from the home – and the shattering of the conjugal family – essentially stripped them of the virtues of "true womanhood," that is, being a housewife and a mother.[2] Unlike widows, for example, separated women symbolized resistance to the institution of the patriarchal family and became social outliers.[3]

Proceeding with a formal separation not only signalled defeat but also turned personal lives public. In order to ensure their own well-being, men and women alike were forced to disclose the painful realities of what had happened to them behind closed doors. Once the trial started, it did not take much for their sufferings to circulate throughout the public. Such drawbacks had the power to compel women to abide by their role in the patriarchal family instead of going through the ordeal of a separation trial, even if that meant staying in abusive

[1] BANQ-Vieux Montreal, Superior Court District of Montreal, *Alexina Cadieux v. Frank Fortin,* 1906.
[2] Harvey, "To Love, Honour and Obey," 135.
[3] Harvey, "To Love, Honour and Obey," 135.

relationships.[4] But the fact that women – and in such great numbers at that – were able to muster up the courage to come face to face with the law and the powerful institutions of marriage and motherhood showcased a loud cry for help.[5] It also shifts the narrative to view battered women as active victims who demonstrated resistance to submission.[6]

Separation Cases as Cases of Wounded Feelings

Separation cases reflect a unique duality between private lives and the public perception of these lives. It is in this sense that looking at emotions as legal objects as opposed to by-products of the legal process demonstrates how separation cases can be considered cases of wounded feelings, a term coined by legal historian, Eric Reiter.[7] Moral injuries are at the forefront of cases of wounded feelings, characterized by the larger umbrella term, *injure*.[8] While the demand for and importance of material damages and compensation varied from case to case, it is worthwhile to recognize that cases of wounded feelings primarily centered around *injure*.[9] *Injure* had historically revolved around status, but by the 1870s, it came to encompass violations relating to "[…] the moral obligations between individuals established by social codes of behaviour".[10] In other words, *injure* described a moral injury rooted in an attack to one's honour, reputation, virtue, and/or propriety.[11] Damage to these sorts of "treasures" that individuals gradually

[4] Harvey, "To Love, Honour and Obey," 135.
[5] Shelley A.M. Gavigan, "Improper Intimacies, Impossible Promises, and the Prerogatives of Patriarchy: Family and Justice in Nineteenth-Century Criminal Courts in Canada's North-West Territories," in *Family and Justice in the Archives: Historical Perspectives on Intimacy and the Law,* eds. Peter Gossage and Lisa Moore (Montreal: Concordia University Press, 2024) 197.
[6] Gélinas, "La violence conjugale," 72.
[7] Reiter, *Wounded Feelings,* 12.
[8] Reiter, *Wounded Feelings,* 31.
[9] Reiter, *Wounded Feelings,* 48.
[10] Reiter, *Wounded Feelings,* 35.
[11] Reiter, *Wounded Feelings,* 53.

collected and so carefully constructed was extremely difficult to restore.[12] Ultimately, *injure* blends the personal and social self by focusing on "[…] the public effects of the personally experienced feelings".[13] This is exactly what took place with separation cases.

Lawyers were faced with the task of contextualizing their clients' feelings in relation to article 189 of the Civil Code, which established "outrage, ill-usage or grievous insult" as legal grounds for separation. This explains why a lawyer, Hugh Mackay, concludes his client's declaration with a statement that reads, "That the Plaintiff is continually subject at the hands of the Defendant to outrage, ill usage and grievous insult".[14] In addition to this, lawyers would also use the following formula (or one similar to it) to bolster their case, quoted here from Marie Louise Normandin's separation case in 1913: "Que la demanderesse s'est toujours montrée femme honnête vertueuse et dévouée".[15] Normandin filed for separation of bed and board *in forma pauperis* from her husband, François Xavier Boudriau because he was frequently intoxicated, physically and verbally abusive, committed adultery, and abandoned her and their only child, Henri, who was 19 years of age at the time of the trial.[16] She also requested a monthly allowance of $40.00 from her husband.[17] Based on Normandin's testimony, it is clear that she carried a grudge over an incident that took place in April of 1912 when her husband questioned the premature birth of their son, accusing her of not being a virgin upon marriage.[18] Normandin also testified that this altercation occurred in front of their son, which she believed was done deliberately on Boudriau's part as an attempt to throw a wrench in their relationship.[19] The use of

[12] Reiter, *Wounded Feelings,* 53.
[13] Reiter, *Wounded Feelings,* 37.
[14] BANQ-Vieux Montreal, Superior Court District of Montreal, *John Whyte v. Evelyn Maud Davies,* 1907.
[15] BANQ-Vieux Montreal, Superior Court District of Montreal, *Marie Louise Normandin v. François Xavier Boudriau,* 1913.
[16] *Marie Louise Normandin v. François Xavier Boudriau,* 1913.
[17] *Marie Louise Normandin v. François Xavier Boudriau,* 1913.
[18] *Marie Louise Normandin v. François Xavier Boudriau,* 1913.
[19] *Marie Louise Normandin v. François Xavier Boudriau,* 1913.

the phrase "honnête vertueuse et dévouée" in Normandin's declaration was an unmistakable indication that she had conformed to the established social codes of behaviour set up for women at the time. It also implied that the way Boudriau treated her clashed with her own assessment of her status or self-worth, eliciting *injure*.[20]

What is interesting, though, is how Normandin was able to use her gender role to find agency amidst oppression and assert her independence from her husband. Normandin, like other women in this collection, was able to strategically use the constraints of patriarchy to obtain agency. This is evident from the language attorneys used in their female plaintiffs' declarations. When describing a female plaintiff, a sentence along these lines was often used to showcase their efforts to restore harmony in the marriage:[21] "avoir longtemps souffert avec patience ces mauvais traitements et cette mauvaise conduite, […]".[22] Women were faced with an oppressive circumstance because their gender role set up an expectation for them to submit to their husbands' bad behaviour given that they were the authoritative force in the relationship.[23] However, a woman's mere presence in the courtroom symbolized an active form of resistance to the rigid set of societal gender roles to which she was expected to conform. Therefore, the word "patience" pins agency and oppression against each other; it demonstrates that the wife *has* conformed to her assigned gender role, but at the same time, is *using* that role to obtain agency by separating from her husband and putting an end to her mistreatment. Overall, Normandin's case aligns with the criteria of cases for wounded feelings. Filing for separation of bed and board was Normandin's way of defending her feelings that had been offended by the defendant's actions and negotiating a separation on her own terms. Doing so allowed Normandin – like many

[20] Reiter, *Wounded Feelings,* 53.
[21] Gélinas, "La violence conjugale," 75.
[22] BANQ-Vieux Montreal, Superior Court District of Montreal, *Albertine Sicotte v. Arthur Sicotte,* 1915.
[23] Harvey, "Amazons and Victims," 137-138.

other women in her situation – to stand up not only for herself and her own future, but for the sake of her child as well.

Equally important, *injure* also accounts for instances of public violation of honour that negatively affected the way in which individuals were perceived in the eyes of others.[24] Unlike in rural settings where isolation was the norm, in towns like Montreal, the life of a married couple was not exactly private.[25] Urban life involved constant observation by peers, relatives, and even the parish priest.[26] To quote historians André Lachance and Sylvie Savoie, "Everyone was always judging everyone else".[27] As a result, couples developed a heightened sense of awareness surrounding their public image.[28] Lachance and Savoie were describing New France, but nineteenth-century Montreal was even *more* crowded and less conducive to privacy. For instance, by 1890, the city's population rose to roughly 183,000 and saw a 410% increase in the number of dwellings from 1792.[29] Maintaining an honourable and dignified image was critical since the way people were perceived in the community directly affected their reputation and credibility.[30] Once couples fought and shattered the ever-so idealized picture of marriage, news travelled fast and scandal broke out.[31] To illustrate this point, I will discuss two cases: one initiated by a man and another by a woman. As we have seen thus far, separation cases unfolded differently for men than for women as different things were prioritized and scrutinized, like sexuality, for example. However, if the focus is shifted solely towards the emotional aspect of

[24] Reiter, *Wounded Feelings,* 53.
[25] Lachance and Savoie, "Violence, Marriage, and Family Honour," 157.
[26] Lachance and Savoie, "Violence, Marriage, and Family Honour," 157.
[27] Lachance and Savoie, "Violence, Marriage, and Family Honour," 164.
[28] Lachance and Savoie, "Violence, Marriage, and Family Honour," 157.
[29] Dany Fougères, "The Modern City: 1840–1890," in *Montreal: The History of a North American City*, ed. Dany Fougères and Roderick MacLeod (Montreal: McGill-Queen's University Press, 2018), 383.
[30] Lachance and Savoie, "Violence, Marriage, and Family Honour," 157.
[31] Lachance and Savoie, "Violence, Marriage, and Family Honour," 157.

separation, it becomes evident that the grievances are the same since honour, dignity, and respect are universally valued and cherished personal assets.

In 1902, Emma Léveillé sued her husband, Philippe Dufresne, for separation and for $5.00 a week in alimony.[32] In her declaration, Léveillé claimed that Dufresne was guilty of spousal abuse because he had hit her, kicked her, and thrown chairs at her. He was described as a frequent drinker who had threatened to "rip her head off her shoulders" while calling her derogatory names.[33] In addition, whenever she left the house to run errands, Dufresne would insult her by accusing her of meeting up with other men.[34] Léveillé also declared she ran a fashion boutique and had been providing for herself because of her husband's ineptitude.[35] She also seemed to resent her husband for having entered her store swearing, threatening to hit her, beat her, and kill her in front of her clients and employees, which put the success of her business in jeopardy.[36]

In comparison, in 1907, John Whyte filed for separation of bed and board from his wife Evelyn Maud Davies due to his wife's abusive behaviour and excessive consumption of alcohol.[37] Whyte declared that Davies had been in a state of intoxication for almost three years, and when in such a state, would become destructive, abuse him and break furniture in their house, which caused him to sometimes fear for his life.[38] Whyte appeared to take particular offense to an event that took place on the fifth of June, 1907, where Davies drunkenly attacked him at the Blue Bonnets racetrack in front of a large crowd of people, "striking him with her

[32] BANQ-Vieux Montreal, Superior Court District of Montreal, *Emma Léveillé v. Philippe Dufresne,* 1902.
[33] *Emma Léveillé v. Philippe Dufresne,* 1902.
[34] *Emma Léveillé v. Philippe Dufresne,* 1902.
[35] *Emma Léveillé v. Philippe Dufresne,* 1902.
[36] *Emma Léveillé v. Philippe Dufresne,* 1902.
[37] *John Whyte v. Evelyn Maud Davies,* 1907.
[38] *John Whyte v. Evelyn Maud Davies,* 1907.

umbrella and using the most violent language".[39] Whyte also declared that Davies had the tendency of showing up unexpectedly to the stable where he worked and caused "a great deal of trouble," which prevented him from doing his job and put his position as a stableman at risk.[40]

Both of these cases reveal the social aspect of *injure* since Dufresne and Davies' actions attacked their respective partner's reputation in public. The scenes at Blue Bonnets and in Léveillé's store contain two important underlying factors. First, they both attracted unwanted attention from bystanders, which Reiter describes as the key element in a situation of insult or dishonour.[41] The following is an excerpt from Whyte's deposition, describing, in his words, what took place at Blue Bonnets:

> Q: Now, would you kindly state what took place on or about the fifth day of June 1907 at the Blue Bonnets Race track?
> A: She came out there; I got a badge from Mr Campbell to bring her to the races and she came out, and I am very busy during the races, as they are going on, and after the races I sent one of the boys over to her to tell her I would not be home until late, for her to go home and not to wait for me, and another party was with her, and they came over towards me, I went and met them halfway, and she started to call me sons of bitches, and a bastard, that I was no good, and she hit me with her umbrella, abused me something terribly in front of everybody.
> Q: About how many people were present that could see that?
> A: A great crowd of people that were seeing the races; she was in the centre of the field and making a regular exhibition -- there were hundreds of people there.[42]

Before analyzing this passage, it is worthwhile to draw attention to how Whyte's testimony was conducted. Plaintiffs were allowed to testify on their own behalf as of 1897.[43] In order for their testimony to be as impactful as possible, plaintiffs and their lawyers moved away from self-serving subjective testimonies to more objective ones that could undeniably showcase

[39] *John Whyte v. Evelyn Maud Davies,* 1907.
[40] *John Whyte v. Evelyn Maud Davies,* 1907.
[41] Reiter, *Wounded Feelings,* 59.
[42] *John Whyte v. Evelyn Maud Davies,* 1907.
[43] Reiter, *Wounded Feelings,* 49.

the claimed injury to a judge.[44] For instance, instead of asking Whyte how Davies' actions made him feel, his lawyer subtly situated Whyte's emotions within the larger framework of social norms and attitudes surrounding gender during this time.[45] It is clear from this statement that Whyte was not just insulted by Davies' actions, but because of the message they sent to everybody else watching.[46] Throughout his legal case file, Whyte is consistently described as a hardworking man. One of the witnesses produced in his favour, Abraham Silverstone, spoke very highly of him when asked what kind of man he considered Whyte to be: "He is a good man. He is as good a man as I have ever met. Ever since I have known him I never saw him under the influence of liquor, but always attending to his business, and dont go round at all […] very hard working".[47] According to Lachance and Savoie, a person's status in the community is measured by what others say about them.[48] If this holds true, then Davies' actions made a fool of him, making it difficult for him to salvage his reputation and avoid a bad one.[49] In a time where Whyte was supposed to be the dominant force in the relationship, what did Davies' act of disobedience make him in the eyes of the public? Powerless? Submissive? Was a gender role reversal taking place? The possibilities were endless.

At the same time, did filing for separation make him unmanly? Whyte testified that he had turned to his boss, Mr. Campbell, for advice about his wife's behaviour several times but Campbell "[…] always told [Whyte] to try and put up with it".[50] From a modern perspective, Campbell's statement inadvertently speaks to ideals of toxic masculinity, which historians Peter Gossage and Robert Rutherdale describe as "[…] the ways that patriarchy itself can be harmful

[44] Reiter, *Wounded Feelings,* 49.
[45] Reiter, *Wounded Feelings,* 49.
[46] Reiter, *Wounded Feelings,* 59.
[47] *John Whyte v. Evelyn Maud Davies,* 1907.
[48] Lachance and Savoie, "Violence, Marriage, and Family Honour," 164.
[49] Lachance and Savoie, "Violence, Marriage, and Family Honour," 164.
[50] *John Whyte v. Evelyn Maud Davies,* 1907.

to both men and women in terms of its predisposition toward violence, sexually aggressive behaviour, or unemotional detachment".[51] Telling Whyte to "put up with it" encouraged a relationship that required Whyte to disregard his own personal boundaries. Therefore, Whyte's case demonstrates that *injure* to the social self was a complex and multifaceted concern.

The second underlying factor that Whyte and Léveillé's case have in common is the fact that their respective partner's actions undermined their professional personas. Both Whyte and Léveillé's respectability was compromised in their place of work. Whyte testified that throughout their marriage, Davies interfered with his work at the stable. He recalled one instance in particular where Davies drunkenly arrived at the stable looking for him and proceeded to bang relentlessly at the door for hours, making "[…] enough noise to almost wake the dead".[52] Moreover, at her separation trial, Léveillé's employee, Marie Laura Montpetit, gave a powerful deposition exposing Dufresne's behaviour at the store:

> Q: L'a-t-il menacée en votre présence?
> A : Oui, il l'a menacée en ma présence, et dans une occasion particulière il l'a menacée avec une chaise.
> Q: Menaçant de la frapper?
> A: Oui.
> Q : L'a-t-il frappée en votre présence soit de ses pieds, de ses mains ou avec d'autres objets?
> A: Non, il allait pour la frapper et elle s'est retirée, et elle a été obligée de prendre des objets pour se défendre, afin de ne pas recevoir de coups.
> Q: Ces injures que vous venez de rapporter, ont-elles été dites fréquemment?
> A: Oui, souvent, chaque fois qu'il était en brosse.
> Q: Etait-ce en présence de quelqu'un qu'il disait cela?
> A: Ces injures étaient dites en présence des jeunes filles employées par la Demanderesse.
> […]
> Q: Est-ce-que les injures que vous venez de rapporter ont été dites aussi en présence des clients, des étrangers qui fréquentaient le magasin?
> A: Souvent c'est arrivé; un jour je suis arrivé au magasin et il était en arrière – je l'entendais chicaner; il y avait des étrangers, des dames qui ont demandé qu'est-ce qu'il y

[51] Peter Gossage and Robert Rutherdale, *Making Men, Making History: Canadian Masculinities across Time and Place* (University of British Columbia Press, 2018), 5.
[52] *John Whyte v. Evelyn Maud Davies,* 1907.

> avait en arrière du magasin; j'ai répondu: "C'est le mari de la Demanderesse qui est après disputer". Ils l'entendaient casser les vitres.
> Q: Jurait-il?
> A: Il jurait, il blasphémait. […] Il est à ma connaissance qu'à raison de l'ébriété du Défendeur et du bruit qu'il faisait alors dans cet état et des injures qu'il proférait hautement, on était obligé de fermer le magasin à meilleure heure que d'habitude et même très à bonne heure, pour éviter le scandale qu'il provoquait ainsi par sa conduite.[53]

Later in her deposition, Montpetit also testified that Dufresne would outwardly accuse Léveillé of "sortir pour rechercher ses amants, ses chums".[54] Regardless of whether or not there was truth behind this statement, Dufresne publicly disclosed a private matter, which crosses into the realm of *injure graves.*[55] Attacking a woman's sexuality was particularly offensive because her honour was built upon it.[56] Considering how serious of an offense adultery was for women at the time, it is warranted to assume that his words could have very well changed the way people perceived her.

As in Whyte's case, it is without a doubt that Dufresne drew unwanted attention from her employees and customers by causing a scene at Léveillé's store. The fact that Dufresne humiliated Léveillé in her own workplace meant that his actions not only compromised her dignity but also her reputation as a boss and businesswoman. With multiple people having witnessed this event, it would not take much for it to turn into "public gossip".[57] Montpetit even said herself how Léveillé was forced to mitigate the extent of this "scandal" by closing her store early. This once again reveals how *injure* extends beyond one level. Dufresne not only managed to damage Léveillé's image, but also her business, which had serious implications considering that she was the one providing for herself; reducing her hours reduced her income and ultimately

[53] *Emma Léveillé v. Philippe Dufresne,* 1902.
[54] *Emma Léveillé v. Philippe Dufresne,* 1902.
[55] Reiter, *Wounded Feelings,* 36.
[56] Lachance and Savoie, "Violence, Marriage, and Family Honour," 165.
[57] Lachance and Savoie, "Violence, Marriage, and Family Honour," 164.

threatened her wellbeing. As a matter of fact, a similar argument can be made for her employees. According to the 1901 Census of Canada, Montpetit would have been approximately nineteen years old at the time of the trial.[58] She lived in a family of eight who, except for her mother and youngest sister, all worked.[59] Montpetit's earnings were likely essential to the survival of her large family, which meant that any disruption to her work would directly affect them. Ultimately, both Whyte's and Léveillé's cases demonstrate the complexity of separation cases and how they can be considered cases of wounded feelings.

Separation cases as a matter of Family Honour

Public gossip culture categorized families based on those who had a good name and those who did not, which meant that maintaining a positive familial reputation was of utmost importance.[60] The complexity of this challenge lay in the fact that a family's reputation was dependent on the actions and reputations of its individual members.[61] This matter is further complicated by society's assessment of the family's performed public image.[62] Defamation threatened the family's control over its reputation and risked portraying its members in a different, untrue, or unfair light.[63] Family honour also concerned itself with who was let into the family. Twenty-two-year-old Philias Richer experienced the downside of this first-hand. In 1905, Richer responded to his twenty-one-year-old wife, Alexandrine Daignault's, separation suit by claiming that

[58] Ancestry.com, *1901 Census of Canada*, Census Place: *Quebec*; Page: *5*; Family No: *53*, Lehi, UT, USA: Ancestry.com Operations Inc, 2006, https://www.ancestry.ca/search/collections/8826/records/14765747
[59] Ancestry.com, *1901 Census of Canada*, 5.
[60] Lachance and Savoie, "Violence, Marriage, and Family Honour," 164.
[61] Reiter, *Wounded Feelings,* 99.
[62] Reiter, *Wounded Feelings,* 126.
[63] Reiter, *Wounded Feelings,* 126.

Daignault's parents' disapproval of him ultimately led to their marital issues.[64] The following are excerpts from Richer's defense:

> Le défendeur admet que la demanderesse […] a injustement, et au grand préjudice du défendeur, subordonné sa conduite vis a vis le défendeur, a la volonté et au caprices de ses parents, qui ont été et sont la cause des difficultés plutôt apparentes que réelles, qui existe actuellement entre les parties en cette cause […] la difficulté entre eux, provient de ce qu'elle préférait et préfère suivre les volontés de ses père et mère, que de suivre celle de son mari, […] toute la difficulté existe entre les partis en cette cause provient du fait, que les père et mère de la Demanderesse sont intervenus et interviennent sans raison dans toutes les relations, même les plus intimes des parties en cette cause, et donnent à la Demanderesse des conseils à l'effet de lui faire hair son mari, le Défendeur, et de la faire s'en séparer.[65]

From the documents in this file, it appears as though Daignault's parents thought of Richer as lazy, claiming that he did not work enough.[66] Richer also testified that "[…] les dits parents de la Demanderesse, et spécialement sa mère, ont dit et répété que le Défendeur était indigne de la Demanderesse, qu'il était un mauvais mari, que cette dernière ne devait pas lui obéir, et autres paroles ayant la même sens, dans le but de détacher leur fille, la Demanderesse, du Défendeur, son époux".[67] From her parents' perspective, having their daughter marry someone who they thought was unworthy to join the family risked tainting their image and reputation. Daignault filed for separation from Richer for other reasons, but the fact that she went through with the trial after less than a year of marriage suggests that she was protecting and prioritizing her family's honour. And it seems like they never changed their minds about each other; just over fifteen years after their trial came to an end, 38-year-old Richer was documented living apart from Daignault at his parents' house in the Westmount-Saint Henri district.[68]

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[64] BANQ-Vieux Montreal, Superior Court District of Montreal, *Alexandrine Daignault v. Philias Richer,* 1905.
[65] *Alexandrine Daignault v. Philias Richer,* 1905.
[66] *Alexandrine Daignault v. Philias Richer,* 1905.
[67] *Alexandrine Daignault v. Philias Richer,* 1905.
[68] Ancestry.com, *1921 Census of Canada*, Reference Number: *RG 31*; Folder Number: *148*; Census Place: *Montréal, Montreal (Westmount-St Henri), Quebec*; Page Number: *20,* Provo, UT, USA: Ancestry.com Operations Inc, 2013, https://www.ancestry.ca/search/collections/8991/records/3938238

However, in some cases, even trusted members of the family posed a risk. Daniel McFarlane Kerr had been married to his wife, Eliza J. Ritchie, for sixteen years before he conducted himself in a way that brought shame to her and family. In her petition, Ritchie stated that Kerr had ill-treated and abused her for many years after their marriage, going as far as to insult her in the presence of other people.[69] As an example, she cited the time when Kerr called her a "common thief" in front of her children and servants.[70] Even more, Ritchie claimed that Kerr openly travelled to Prince Edward Island with a woman by the name of Mrs. Cameron, and lived with her in hotels "[…] to the scandal and disgrace of the said plaintiff and of her family".[71] To make matters worse, it appears as though Kerr had a history of being unfaithful to his wife long before this incident, which implies that her honour, and by extension that of her family, had been in jeopardy for a while. Overall, sentiments of betrayal are riddled throughout this case over the bond of affection that was supposed to exist between the couple but did not.[72]

Moreover, since one of their main duties was to defend the honour of their women and family, many fathers came to the defense of their daughters during separation trials.[73] For example, Daignault's father, Alderic Daignault, provided a 47-page deposition at her trial, in which he makes a considerable effort to demonstrate why she deserved a separation; "Il n'aimait pas sa femme et c'est pour cela qu'il n'y avait pas moyen de vivre ensemble de cette manière".[74] In a different case, Toussaint Sicotte, father of Albertine Sicotte, testified on her behalf during her separation trial in 1915. Albertine declared that her husband Arthur Sicotte frequently insulted her, which her father confirmed as he stated, "Il est à ma connaissance personnelle que

[69] BANQ-Vieux Montreal, Superior Court District of Montreal, *Eliza J. Ritchie v. Daniel McFarlane Kerr,* 1893.
[70] *Eliza J. Ritchie v. Daniel McFarlane Kerr,* 1893.
[71] *Eliza J. Ritchie v. Daniel McFarlane Kerr,* 1893.
[72] Reiter, *Wounded Feelings,* 173.
[73] Lachance and Savoie, "Violence, Marriage, and Family Honour," 165.
[74] *Alexandrine Daignault v. Philias Richer,* 1905.

le défendeur a insulté plusieurs fois la demanderesse".[75] Toussaint, like other fathers, stood up for his daughter because an attack on her also represented an attack to his family's name.

In other cases, the defendant's attack on the plaintiff's family was more outright. For instance, Montpetit testified that during one of Dufresne's episodes in Léveillé's store, he was overheard saying "que la famille de la Demanderesse était une famille maudite, que son père était un vieux maquereau, un maudit enfant de chienne, […]".[76] Likewise, in the previously discussed case of *Mathias Sauvé v. Délia Hébert*, Sauvé testified that in April of 1903, in an attempt to humiliate him, Hébert referred to Sauvé's mother as "putain," "femme de rien," and other derogatory names that Sauvé claimed were absolutely false.[77] Such verbal attacks towards the character of one's relatives were seen as a cheap shot.[78] While the argument could be made that Léveillé and Sauvé did not directly suffer from their partners' comments about their parents, these words carried weight nonetheless that could very well affect the family's place in society and public memory.[79] Thus, in cases where the defendant defamed the plaintiff's family, proceeding with a separation trial acted as a way for individuals to defend their family's honour.

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Ultimately, this chapter has put forward the idea that separation of bed and board affected more than just the couple; the process allowed for individuals to defend their honour and reputation. Likewise, separation trials also shed light on the role individual honour plays in the larger composite of family honour. More broadly, examining legal case files from an emotional

[75] *Albertine Sicotte v. Arthur Sicotte,* 1915.
[76] *Emma Léveillé v. Philippe Dufresne,* 1902.
[77] *Mathias Sauvé v. Délia Hébert,* 1904.
[78] Reiter, *Wounded Feelings,* 110.
[79] Reiter, *Wounded Feelings,* 100.

perspective is an incredibly valuable approach that might reveal complexities that may not necessarily be obvious at the surface level. The question, then, becomes: how might this add to judges' already difficult decision making? What was the decision-making process like? And relatedly, how did judges' decisions impact individual lives?

Chapter 4: Outcomes

It should now be evident that there were a multitude of factors that made each individual separation case unique. The same can be said about the outcome of a case, especially considering that it was dependent on the views and biases of a judge. The length of a separation trial varied but overall, the success rate for women was considerably high, but at what cost?

Judges' Role

Judges, for obvious reasons, played the biggest role in the outcome of separation cases. However, their decisions were highly influenced by the social norms and attitudes surrounding gender, family, and marriage at the time.[1] Unlike divorce, separation was tolerated as a last resort; but it still posed a threat to the social order.[2] In this sense, judges prioritized the family's best interest and only granted separation in cases where it was absolutely inevitable.[3] This explains why ideas of reconciliation highly influenced judges' decisions. Judges had to weigh the narratives put forward by the plaintiff and the defendant in order to assess the extent of the proposed material and/or moral injury.[4] They also had to evaluate whether the complaints at hand took place in isolation or were frequent occurrences.[5] This step was absolutely crucial because if the judge determined that the offence happened in isolation, his default conclusion pointed to the possibility of reconciliation among the couple. After all, the laws surrounding separation were created with the intention for it to be a temporary solution that preserved the husband's dominant position in the marriage.[6] In the event that a reconciliation did take place,

[1] Reiter, *Wounded Feelings,* 49.
[2] Lachance and Savoie, "Violence, Marriage, and Family Honour," 160.
[3] Gélinas, "La violence conjugale," 37.
[4] Reiter, *Wounded Feelings,* 49.
[5] Gélinas, "La violence conjugale," 36.
[6] Lachance and Savoie, "Violence, Marriage, and Family Honour," 149.

article 217 of the Civil Code affirmed that "[…] the husband reassumes all his rights over the person and property of his wife, the community of property is re-established of right, and for the future, is considered as never having been dissolved".[7]

Philomène Dugas dit Labrèche experienced this bias towards reconciliation first-hand. In 1890, she sued her husband, Mélasippe Taillon, for separation of bed and board after less than a year of marriage on the grounds that he had abandoned her, and left her with no means to support herself.[8] In his defense, Taillon explained that his job as a blacksmith required him to move from time to time to find work, and that his wife refused to accompany him because she wanted to remain in close proximity to her mother. The judge ruled in Labrèche's favour on the condition that the separation would only take effect one year later.[9] In other words, this decision was rendered in the hope that the couple could potentially find a way to reconcile with time.[10] As a matter of fact, it appears as though they did since the 1911 Census of Canada reveals that they were still married, living in the same domicile, and had three children together between 1899 and 1901.[11] Interestingly, it also indicated that Taillon worked in carpentry – perhaps this was a more sedentary profession which would have pleased his wife. But this could also be explained by the fact that Montreal was growing quickly during this time. For instance, Montreal's population jumped from approximately 220,000 in 1891 to nearly half a million in 1911.[12] As such, there could have very well been an increase in demand for the carpentry profession, especially given

[7] Québec, *Civil Code of Lower Canada,* art. 217.
[8] *Philomène Dugas dit Labrèche v. Mélasippe Taillon,* 1890.
[9] *Philomène Dugas dit Labrèche v. Mélasippe Taillon,* 1890.
[10] *Philomène Dugas dit Labrèche v. Mélasippe Taillon,* 1890.
[11] Ancestry.com. *1911 Census of Canada*, Census Place: *132 - Montreal, Maisonneuve, Quebec*; Page: *6*; Family No: *57*, Provo, UT, USA: Ancestry.com Operations Inc, 2006, https://www.ancestry.ca/search/collections/8947/records/982456?tid=184553008&pid=322430754375&ssrc=pt
[12] John Douglas Belshaw, *Canadian History: Post-Confederation* (Victoria, B.C.: BCampus, 2016), 128.

that by 1921, manufacturing and construction accounted for thirty percent of Canada's gross national product.[13]

Lumina Dufour, on the other hand, would be the first to point out the faults in this so-called "solution". Dufour had filed for separation against her husband, Philias Granger, due to his abusive behaviour and excessive alcohol consumption.[14] Her declaration recounted awful incidents, such as the one that took place in June of 1902, when Granger beat her, pulled her hair, tied her feet and hands and threw her to the ground.[15] In spite of this, Dufour was persuaded to drop her suit based on her husband's promise to change his behaviour. However, his behaviour did not change; "il est pire que jamais, et devient de plus en plus méchant, brutal, et insultant".[16] As a result, Dufour was left with no other choice but to file for separation from her husband for a second time. Her case demonstrates the major risk that women took if they reconciled with their previously toxic husbands. It is highly unlikely that judges were blind to this trade-off, which demonstrates their inclination to put the traditional gender-imbalanced institution of marriage over individual rights and protections.

Furthermore, judges' decisions were also clouded by their perception of women. In cases surrounding one's honour, Reiter points out that male judges could have been more inclined to view women's complaints as "mere feelings" in ways that men's cases were not.[17] To their credit, however, dismissing women's cases based on mere feelings was not the favourable approach because it undermined the very social morality that honour was built upon.[18] Nevertheless, in order to bypass this stereotypical bias, lawyers used the social codes of honour

[13] Margaret Conrad, *A Concise History of Canada,* (Cambridge: Cambridge University Press, 2012), 174-175.
[14] *Lumina Dufour v. Philias Granger,* 1902.
[15] *Lumina Dufour v. Philias Granger,* 1902.
[16] *Lumina Dufour v. Philias Granger,* 1902.
[17] Reiter, *Wounded Feelings,* 67.
[18] Reiter, *Wounded Feelings,* 67.

and gender to their advantage and played up humiliation to convince judges of the plaintiff's sufferings.[19] In the words of Reiter, although judges were capable of "[…] being blinded by patriarchy and seeing women as schemers and connivers," nothing brought about chivalry from elderly male judges more than an attack on a woman's virtue whose sexual reputation was unquestioned.[20] For example, in 1892, Salomé Gohier filed for separation of bed and board from her husband, Dominique Leduc, after 10 years of marriage. In her declaration, Gohier described the extreme brutality that she had to endure from her husband, such as the time when her husband attacked her while she was pregnant by hitting her in the stomach, pushing, and shaking her so hard that she lost consciousness.[21] She also recounted that her husband would constantly accuse her of infidelity, and had even done so in public when he claimed that he was not the father of their last born child.[22] Judges drew on their knowledge of social norms to assess the emotional impact of different kind of insults.[23] In this sense, Gohier and her lawyers might have been able to salvage her reputation and mitigate the severity of this accusation by drawing upon her role as a mother and reinforcing her honesty, loyalty, submissiveness, and patience to her husband's bad behaviour.[24] Thus, Leduc's attack on Gohier's previously unblemished sexual integrity may have been one of the reasons as to why the judge on her case was inclined to grant her separation and protect her honour.[25]

Some women, like Hortense Larose, however, were not as fortunate. Larose decided to no longer put up with her husband's abuse by filing for separation of bed and board in 1893,

[19] Reiter, *Wounded Feelings,* 67.
[20] Reiter, *Wounded Feelings,* 70.
[21] *Salomé Gohier v. Dominique Leduc,* 1892.
[22] *Salomé Gohier v. Dominique Leduc,* 1892.
[23] Reiter, *Wounded Feelings,* 69.
[24] *Salomé Gohier v. Dominique Leduc,* 1892.
[25] *Salomé Gohier v. Dominique Leduc,* 1892.

after only one year of marriage.[26] To her detriment, even after putting forward the allegation that her husband, Charles Dufresne had attempted to poison her, the court dismissed her action due a lack of evidence.[27] Although lack of evidence is a genuine reason to dismiss a case, when taking into consideration women's inferior status under the law and in society, it raises the question of whether or not the same approach would have been taken had the gender of the parties been reversed. For example, in 1904, Antoine Fournier pursued his wife, Clémentine Martin, for separation of bed and board because of the abusive behaviour Martin demonstrated towards him. Fournier testified that he suffered years of abuse, which included being pulled by his hair, and having kitchen utensils, pieces of wood, a knife, and pieces of a shattered mirror thrown at him, which left him with considerable injuries.[28] His file also specified that Martin had attempted to tarnish his honour and reputation by privately and publicly accusing him of having multiple mistresses.[29] Therefore, even though Larose and Fournier's cases both center around abuse, the fact that Fournier was ultimately granted separation when Larose did not even get the chance to proceed with a trial perhaps indicates the presence of larger misogynistic forces at play.[30]

Class was another factor that judges took into consideration when evaluating cases of separation of bed and board. According to article 190 of the Civil Code, the nature and sufficiency of outrage, ill-usage or grievous insult was "[…] left to the discretion of the court, which, in appreciating them, must take into consideration the rank, condition and other circumstances of the parties".[31] This provision essentially gave judges justification for examining cases brought about by people who enjoyed property and privilege differently than those from a

[26] *Hortense Larose v. Charles Dufresne,* 1893.
[27] *Hortense Larose v. Charles Dufresne,* 1893.
[28] *Antoine Fournier v. Clémentine Martin,* 1904.
[29] *Antoine Fournier v. Clémentine Martin,* 1904.
[30] Gélinas, "La violence conjugale," 69.
[31] Québec, *Civil Code of Lower Canada,* art. 190.

working-class background, especially when it came to abuse. Frémont reinforces this idea with the following statement: "Un soufflet […] ou un coup de poing qu'un homme aura donné à sa femme, qui pourrait être une cause de séparation entre des personnes de condition honnête, n'en sera pas une entre des gens de bas people, à moins qu'ils n'aient été souvent réitérés".[32] Though Frémont's words demonstrate his prejudice as much as anything else, one might expect that the intersection between gender and class put working-class women at a serious disadvantage before their case was even reviewed. However, while couples seeking separation came from a variety of different backgrounds, the majority of them were part of the working class (see table 5). With this being the case, the question of why so many working-class women were granted separation of bed and board becomes all the more interesting.

Table 5: Husband's Occupation / Social Standing (based on the cases where it is explicitly indicated)

Husband's Occupation / Social Standing	Frequency	Percentage
Skilled or Semi-Skilled Workers:	45	48.9%
Labourers	10	10.9%
Farmers	4	4.3%
Merchants	5	5.4%
Professionals	5	5.4%
Other White Collar	19	20.7%
Bourgeois etc.	4	4.3%
Not mentioned in the case file	29	
Total:	121	

Decisions

As depicted in figure 5, excluding the cases with no judgement,[33] 52 out of the remaining 67 cases contain a judgement rendered in favour of the plaintiff, 88% of whom were women. This number includes Philomène Dugas' separation that would only take effect one year after the initial judgement. On the other hand, the previously discussed cases of Alida Mailloux and

[32] Frémont, *Le divorce et la separation de corps,* 85.
[33] The 54 cases without a judgement appear to be abandoned since they do not contain a judgement in their file nor in the plumitif.

Daignault v. Richer are the only ones in which the initial request for separation was denied, and the final verdict was rendered in favour of the defendant, respectively. One possible explanation for this considerably high success rate is the fact that judges viewed domestic violence as immoral and sympathized with battered women.[34] Male judges granting women separation can also be interpreted as their way of abiding by the patriarchal values outlined in article 174 of the Civil Code; if a woman's husband was not fulfilling his role to protect his wife, then another male figure should.[35]

There might also be an indication that judges slowly began to recognize the legitimacy of marital issues stemming from incompatibility.[36] Between 1892 and 1906, there are five cases in this collection – four initiated by a woman and one by a man – that contain a variation of the following statement in the plaintiff's declaration: "Il existe entre la defenderesse et le demandeur une incompatibilité irréconciliable de caractère et la vie commune est impossible entre eux".[37] Albeit paired with other motives, interestingly, all five of these cases were rendered in favour of the plaintiff. Additionally, Salomé Gohier's aforementioned case which resulted in a positive outcome, included a statement in her declaration claiming her husband no longer had any love for her.[38] We also see the mention of love in witness depositions:

> Q: Qu'est-ce qu'il disait à sa femme?
> A: C'étaient des injures, de dire qu'elle ne l'aimait pas, qu'elle ne l'aimait pas, lui; c'était continuellement comme cela, le temps qu'il était dans la maison.[39]

Mentioning love and compatibility even though they were not legally valid motives for separation could point to the emergence of a new conception of marriage centered around these

[34] Gélinas, "La violence conjugale," 69-70.
[35] Québec, *Civil Code of Lower Canada,* art. 174.
[36] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 90.
[37] *Mathias Sauvé v. Délia Hébert,* 1904.
[38] *Salomé Gohier v. Dominique Leduc,* 1892.
[39] *Alexandrine Daignault v. Philias Richer,* 1905.

notions. In fact, Cliche also noticed a shift in judges' mentality in the early 1920s as they began to recognize that "outrage, ill-usage or grievous insult" could stem from the absence of love – an interpretation that put women in a significantly more favourable position when applying for separation.[40] Though this exceeds the timeframe of my research, it demonstrates that change about the perception and understanding of marital relations was on the horizon.

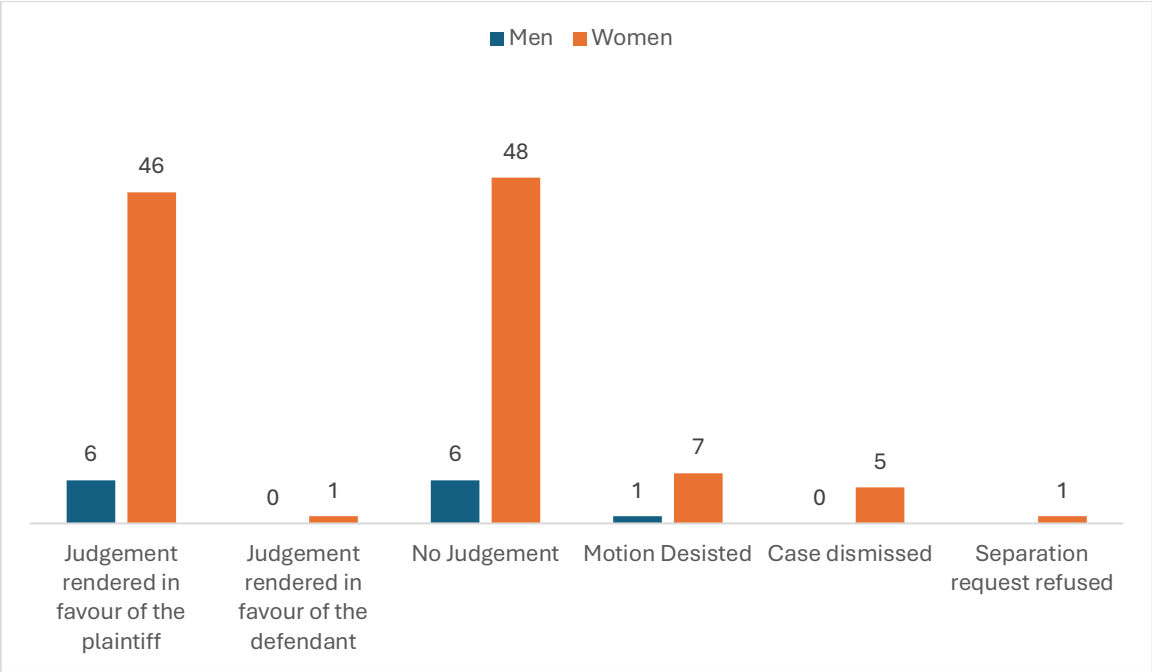

Figure 5: Success Rate based on 121 cases

The remaining thirteen cases were either desisted at the request of one or both parties (eight cases) or dismissed by the court (five cases). For example, Marie-Louise Gauthier, whose case was discussed in chapter two, ultimately desisted from her action to separate from her husband Alfred Roussille.[41] This is surprising given the rampant abuse to which she testified. Considering the severity of her situation, it seems unlikely that her legal action would have caused her husband to completely change his behaviour. One could speculate, then, that a larger societal force was at play that could explain her rationale to drop her suit. Some cases were

[40] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 90-91.
[41] *Marie-Louise Gauthier v. Alfred Roussille,* 1908.

dismissed by the court because a settlement or compromise was achieved between the parties. For example, in 1897, Marguerite Charbonneau sued her husband, David Laird, for separation on the grounds of his adultery. During the proceedings, Charbonneau accepted Laird's suggestion to remove his mistress from their home, which led the court to dismiss their case.[42] Other cases in this category contain the statement, "rayée du rôle," without any further explanation. This makes it difficult to fully comprehend the circumstances that caused judges to dismiss, and left individuals stuck in intolerable living conditions. However, as pointed by Gélinas, the likely hypothesis points to judges' misogyny in seeing self-pity in women's allegations, preferring to believe the male defendant.[43]

Separated Women

As previously established, separated women had to deal with negative connotations framing them as social outliers for disrupting the conjugal family.[44] Since women were granted child custody the majority of the time, their reputation was likely further scandalized by the image of being a "single" mother. Vitaline Chartrand would have experienced this firsthand. After being granted separation from her husband, Arthur Hevey, in 1907,[45] according to the 1921 Census of Canada, Chartrand and her daughter Marie-Bernadette were living on their own in Montreal's Saint Jacques district.[46] It seems very likely that the couple had been living separately well before that, since Hevey was absent from his own daughter's baptism in May of 1908.[47] As

[42] BANQ-Vieux Montreal, Superior Court District of Montreal, *Marguerite Charbonneau v. David Laird,* 1897.
[43] Gélinas, "La violence conjugale," 70.
[44] Harvey, "To Love, Honour and Obey," 135.
[45] BANQ-Vieux Montreal, Superior Court District of Montreal, *Vitaline Chartrand v. Arthur Hevey,* 1907.
[46] Ancestry.com, *1921 Census of Canada*, Reference Number: *RG 31*; Folder Number: *140*; Census Place: *St Jacques, Montreal (St Jacques), Quebec*; Page Number: *4,* Provo, UT, USA: Ancestry.com Operations Inc, 2013, https://www.ancestry.ca/search/collections/8991/records/5756432?tid=1140063&pid=-1726630920&ssrc=pt
[47] Ancestry.com, *Quebec, Canada, Vital and Church Records (Drouin Collection), 1621-1968*, Institut Généalogique Drouin; Montreal, Quebec, Canada; *Drouin Collection*; Author: *Gabriel Drouin, Comp.,* Lehi, UT, USA:

emotionally draining as this must have been, separated women had arguably bigger issues to overcome.

For women, marriage represented a means of subsistence and without it, they were at risk of being financially insecure.[48] The dissolution of the community of property inherent in separation was able to mitigate *some* of these negative effects, as discussed in chapter two. In addition, urbanization and industrialization also provided women with a certain level of support in times of desperation. Thirty-three percent of the women in these cases who filed for separation at the turn of the twentieth century had already been working outside of the home to make a living. In Cliche's sample of 500 cases filed between 1900-1930, 105 women (21%) indicated they had taken up work outside the home. Together, this information suggests that having the option to take up a job and be self-sufficient might have facilitated a woman's decision to separate.[49] Chartrand, for example, was working as a seamstress in 1921 and had taken in a lodger by the name of Ferdina Sénécal, which surely provided her with extra money for herself and her child.[50]

Life after Separation

As addressed in Savoie's research, it is very difficult to piece together the lives of individual men and women in the aftermath of their separation.[51] However, genealogy websites such as *Ancestry.ca* can be useful in providing historians with information about a given individual, couple, or family. Using *Ancestry* allowed me to discover that John Whyte and Evelyn Maud

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Ancestry.com Operations, Inc., 2008, https://www.ancestry.ca/search/collections/1091/records/5503532?tid=1140063&pid=-1759129385&ssrc=pt

[48] Savoie, "Women's Marital Difficulties",481.

[49] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 79.

[50] Ancestry.com, *1921 Census of Canada*, 4.

[51] Savoie, "Women's Marital Difficulties",481.

Davies were still living together as of 1921.[52] It is only in 1931 that the census recorded John as "single," living alone at 418 Prince Arthur Street.[53] No further information about Davies was found, but it seems like the couple never had children together.[54] On the other hand, Salomé Gohier and Dominique Leduc appear to have reconciled after their legal separation in 1892 since the 1911 Census of Canada indicated that they were still living in the same household with their two children aged five and four.[55]

Some couples seem to have taken their legal separation one step further. For instance, after her legal separation from her husband Robert Henry MacLean was official sometime after 1906, Enid Stewart Gretchen Levin moved to New York with her son Allison MacLean.[56] Florence Loretta Haynes' husband, George W. Shampine, on the other hand, sued her for separation in 1915 on the grounds that she abandoned him and "declared that her mind is made up irrevocably never to return to the conjugal domicile".[57] My hypothesis is that these women went to the United States with the purpose of becoming American citizens in order to obtain a divorce. I am led to believe this because both Levin and Haynes remarried while MacLean and Shampine were still alive, and they both continued to reside and eventually died in the US.[58]

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[52] Ancestry.com, *1921 Census of Canada*, Reference Number: *RG 31*; Folder Number: *142*; Census Place: *Montreal, Montreal (St Lawrence-St George), Quebec*; Page Number: *7*, Provo, UT, USA: Ancestry.com Operations Inc, 2013,https://www.ancestry.ca/search/collections/8991/records/5791940?tid=69179657&pid=372204429829&ssrc=pt

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[54] "John Whyte ("Jack")," Whyte Wells Family Tree, dianaw175, ancestry.com, https://www.ancestry.ca/family-tree/person/tree/69179657/person/372204426000/facts

[55] Ancestry.com, *1911 Census of Canada*, Census Place: *48, Jacques-Cartier, Quebec*; Page: *15*; Family No: *148,* Provo, UT, USA: Ancestry.com Operations Inc, 2006, https://www.ancestry.ca/search/collections/8947/records/8595358?tid=25271146&pid=102211645164&ssrc=pt

[56] "Enid Stewart Gretchen Levin," Garvey Family Tree, mnghome, ancestry.com, https://www.ancestry.ca/family-tree/person/tree/9968973/person/132177856969/facts

[57] BANQ-Vieux Montreal, Superior Court District of Montreal, *George W. Shampine v. Florence L. Haynes,* 1915.

[58] "Enid Stewart Gretchen Levin," Garvey Family Tree, ancestry.com., and "Florence Loretta Haynes," Wray Family Tree, usawray, ancestry.com, https://www.ancestry.ca/family-tree/person/tree/10650758/person/25574971774/facts

Therefore, these examples provide insight on only a few of the many different possible scenarios that could have taken place after a couple was granted separation of bed and board.

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In essence, the majority of those obtaining separations came from working-class backgrounds. Still, obtaining a separation was a lengthy and seemingly overall emotionally charged process regardless of one's status. Research based on *Ancestry.ca* has made it clear that life after separation did not follow a uniform structure but varied depending on individual circumstances and life events. What remains consistent is that separated women were forced into being completely self-sufficient – something that was previously unknown for most of them – while navigating the world with a certain label about their womanhood and motherhood.

Conclusion

Ultimately, the relationship between women and separation of bed and board in Montreal from 1866-1916 cannot be described as anything other than a complicated one. Marriage in nineteenth-century Canada, in the words of historian Constance B. Backhouse, was arguably the most important social institution that acted as "[…] the bedrock upon which all other social relationships were constructed and it was universally touted as natural and essential to the smooth functioning of civilization".[1] Between the cost, condemnation by the Catholic Church, and the complex procedure to obtain a parliamentary divorce, separation of bed and board was the only viable option for couples seeking to escape unhappy marriages. When a husband was not fulfilling his duties set up by the established set of gender roles, wives were stuck between a rock and a hard place since the idea of a married woman working to support her family was practically unthinkable at the time. This thesis has put forward the argument that the tensions between structure and agency were the two forces at play when women filed for separation of bed and board.

In order to do so, women had to overcome various financial, legal, and social hurdles. The fact that women needed their husband's permission and money to file for separation against him only scratches the surface of the various forms of oppression embedded in separation of bed and board that served to marginalize married women in Montreal's society. At the same time, however, the process provided women with an opportunity to claim their agency and take control of their own destiny. For instance, the *in forma pauperis* clause acted as a real saving grace for many working-class women who were confident enough to make their case but unable to afford the cost of a trial. Women were also able to manipulate their gender role in a way that adhered to

[1] Backhouse, "Pure Patriarchy," 312.

the meticulous nature of the motives for separation outlined in the Civil Code. Using words such as "patient," "honest," "submissive," and "virtuous" to describe themselves in their declarations showcased that they had conformed to their gender role but at the same time were using it to obtain agency. Doing so gave them the opportunity to rid themselves of their husband's abuse, alcohol addiction, and failure to provide – the three most commonly cited motives for separation. Thus, separation of bed and board not only acted as a solution for many women but also represented their challenge to patriarchy.

Even more, women and men were able to use separation of bed and board to stand up for themselves and their feelings that their partners had damaged – making them cases of wounded feelings. This is where depositions and cross-examinations of the parties and/or witnesses were useful in situating the alleged offenses in respect to article 189 of the Civil Code, which may ground a separation based on "outrage, ill-usage or grievous insult".[2] In this sense initiating an action could not only be interpreted as an act in defense of individual honour, but sometimes family honour as well. The fate of these individuals was ultimately left in the hands of judges, who, before even examining their cases were already influenced by preconceived social understandings of class and gender. This also speaks to the numerous cases with no judgement and provokes reflection about just how many cases remained unheard because of oppressive forces at play. Yet the fact that judges *did* grant many women – and sometimes men – separation leads one to question why this was. Even though judges sometimes sympathized with battered women, based on my research, I am inclined to believe that there must have been another imperative. The protection of women was often incidental and not necessarily the intention of the law; separation was intended to protect the institution of the family that was the driving force

[2] Québec, *Civil Code of Lower Canada,* art. 189.

behind the functioning of Quebec's society at the time. However, it became evident that the definition of the "family" as they knew it was changing. Judges' decisions backed this up as they began to fathom the importance of love for a happy and healthy marriage.

Separation rates continued to rise until the late 1960s, until they were ultimately overtaken by divorce.[3] Be that as it may, separation of bed and board left its mark on Montreal's society since its population continued to opt for it instead of divorce until this time. Cliche's research on separations between 1900-1930 reveals that throughout this period of 30 years, a total of 72 divorces were obtained across the province of Quebec compared to 1504 separations for the Montreal Judicial District alone. Cliche argues that this indicates a strong religious presence in Quebec at the time,[4] and while this holds true, it might also point to a shift towards a more individualistic perception of marriage.

Individualism is a fundamental component of liberalism, an ideology that was taking root in this period, which revolves around three main elements: liberty, equality, and property.[5] In the nineteenth century, property was at the top of this hierarchy.[6] But the prominence of separation of bed and board may symbolize a shift in this order over time. Separated couples demonstrated that liberty made its way to the top of this hierarchy. To a certain extent, separation acted as a means for individuals to put their own needs first. Property would have come second since it was vital to the survival of separated individuals, especially women. Liberalism's growing influence can also be seen in the fact that couples who decided to sign a marriage contract increasingly opted for separation of property.[7] In this scenario, even though equality was at the bottom of the

[3] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 96.
[4] Cliche, "Les séparations de corps dans le district judiciaire de Montréal de 1900 à 1930," 96.
[5] Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," *The Canadian Historical Review* 81, no. 4 (2000): 624, https://muse.jhu.edu/article/590654.
[6] McKay, "The Liberal Order Framework," 624.
[7] Bradbury et al., "Property and Marriage," 35, and Bradbury, *Wife to Widow,* 84.

hierarchy, it *did* remain the ultimate goal for married couples. Separations occurred *because* of a power imbalance between the couple, so an increase in the number of separations is reflective of a movement towards a more equal notion of marriage based on love and respect – true companionate marriages.

The aftermath of separation perhaps embodies the tensions of structure and agency the most. Faced with a negative connotation, separated women were forced to build a new life. Mothers were also often granted child custody which meant that their concerns went deeper than just themselves. Although living separately, many women, especially those with children, were still reliant on their husbands for alimony, which came with its own set of risks and rewards. They were also limited in what they could do with their property aside from its day-to-day administration, which was a right that other women under Civil and Common law jurisdictions did not have. In addition, their assets were protected from their husband's misuse, and they no longer had the responsibility to guarantee their husband's outstanding debts. The provisions surrounding protection of property also held true for men who separated from their wives. In essence, the extent to which women were truly independent from their husbands remains a matter of debate, but as limited as they were, there were definitely some advantages to separation.

Looking at life after separation reveals a lot and contributes to this debate. Women who escaped abusive and otherwise toxic households put their lives first but at what cost? To be a poor, social outlier, haunted by their past, humiliated by their present, and unsure of their future. Among the cohort of separated couples, a handful chose to remarry and start a new life elsewhere, which is why I have suggested that they might have obtained a divorce in the United States where it was easier to do so. The advent of urbanization and industrialization also

correlated with an increase women's requests for separations, which might shed light on the presence of a so-called "safety net" phenomenon – that is, the knowledge that if push came to shove, they *could* get a job and find a way to support themselves.[8] Interestingly, there is evidence that some couples who were granted separation ultimately got back together. In the eyes of the law, these couples utilized separation for its very purpose: a temporary arrangement until reconciliation. Could this indicate a change in human behaviour or that separation was used as a pressure tactic to do so? I would say this could be a possibility and is definitely an interesting starting point for future research. Regardless, what *is* clear is that separation of bed and board impacted individual lives on so many different levels.

[8] Cliche, "Les procès en séparation de corps dans la région de Montréal, 1795-1879," 9-10.

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