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Résumé de l'article

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Précis

L'administration de la justice en Nouvelle-France aurait été plus onéreuse qu'ont bien voulu l'affirmer plusieurs auteurs. Si les frais de cour étaient tout de même généralement moins élevés au Canada que dans la métropole, les structures de tarifs étaient sensiblement les mêmes et les variations perceptibles sont plus dues aux différences dans la durée des procédures, généralement plus courtes au Canada. De plus, même si la justice demeurait accessible au paysan, le marchand et l'élite coloniale, comme partout ailleurs, étaient quand même favorisés.

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*Court Costs in France and New France in the Eighteenth Century**

One of the main grievances against French justice in the seventeenth and eighteenth centuries was that trials lasted too long and cost too much.[1] Most historians have seen this situation as a consequence of venality; a position was not considered a function, but a piece of property to be exploited.[2] Hence the proliferation of venal posts, created to fill the royal coffers, resulted in a slow, expensive and defective judicial machine.[3] The extremely modest wages paid to court personnel (from 0.5 to 5.5 percent of the required purchase price) could not maintain a respectable life style for office holders.[4] Since the most expeditious types of procedure did not generate any remuneration for the judges, these men had a powerful incentive to drag out trials and augment their revenue.[5] This dark picture is very widespread and has been used extensively as a starting point for studies of Canadian justice.

In comparison, most historians have seen the colonial judicial administration as a brilliant example of purity. Members of all schools, from Parkman to Groulx, have sung the praises of the colonial system. LaHontan's famous quip about lawyers[6] has been integrally transcribed as proof that justice was cheap if not free.[7] W.J. Eccles is a bit more cautious, but nevertheless compares the colony favorably with the French situation.[8] Even those who have studied the judicial administration more thoroughly, have concluded that costs were slight.[9] Works on criminal justice have occasionally given data on expenses and the authors have pointed out that fees could hold back potential plaintifs. However, general conclusions can hardly be drawn from this type of data given the exceptional character of criminal proceedings.[10] Of the two studies that deal specifically with Sovereign Court costs, one is too superficial,[11] and the other restricts itself to two years.[12] At the Prévôté level, only J. Mathieu has dared claim that trials were expensive and that settlers could not afford the luxury of court cases without good reason.[13] This statement was disputed by A. Vachon who promised to devote an article to this subject, but it has not yet been published.[14] Despite the importance of this question for a proper understanding of the workings of the judicial administration, no systematic study has tried to analyse the exact make-up of judicial fees.

The analysis must go beyond a sterile revisionism. The question of whether expenses were high or low, is secondary to the evaluation of the impact of fees and the duration of cases on accessibility to the judicial system. Were the courts

open to the whole population, or did they become the preserve of the elite who alone could afford them? If so, did they become a mechanism to reinforce the interests of one group in society? In order to answer these questions, an understanding of the system which inflicted these fees is necessary. In Canada as in France, a theory existed on the proper cost of justice, but it must be placed in context and examined to see whether it conforms to reality. The total cost was dependent on the amount of work done by officials, and it is therefore necessary to determine what could increase or diminish their tasks, which members of the judicial machine stood to gain the most, as well as the motives which could encourage the judge to prolong or hasten the conclusion of a case. Since Canadian documentation is not very enlightening on some of these points (very few complete lists of detailed expenses or *taxes de dépens* are extant for the Prévôté), a comparative method is necessary. Judicial fees in an average French bailliage such as the one at Falaise, although they are not exactly similar, make the system comprehensible. They also constitute a scale against which Canadian costs can be measured, and it is thus possible to determine whether Canadian justice was worthy of so much praise.

From time immemorial, the kings of France had been preoccupied in theory about the problem of costs and the slowness of the judicial administration which made trials almost "immortal".[15] Almost all the edicts that attempted to reform this branch of the royal bureaucracy allude to the importance of this sector to the Crown and try to speed up proceedings and make the courts more accessible.[16] The preamble to the Civil Ordinance of 1667 underlines this aspect:

> Comme la justice est le plus solide fondement de la durée des états, qu'elle assure le repos des familles et le bonheur des peuples . . . (il est nécessaire de) rendre l'expédition des affaires plus prompte, plus facile, plus sûre.[17]

Royal theory on judicial fees reached its ultimate point in a 1673 edict which set the remuneration of *commissaires*. The first article stipulated:

> Voulons par provision, et en attendant que l'état de nos affaires nous puisse permettre d'augmenter les gages de nos officiers de judicature, pour leur donner moyen de rendre gratuitement la justice à nos sujets . . .[18]

Unfortunately for the subjects, the state of royal finances never enabled the king to increase wages and abolish fees! Gratuity in France was no more than a pious vow with no possibility of ever being applied. Theory, as expressed in royal ordinances, would not seem to be a very reliable indication of reality, and this must be kept in mind when examining the colonial situation.

In New France, the judicial system took form just when ministerial idealism was at its zenith. Therefore it is not surprising that the frame of mind exhibited in the Civil Ordinance and the 1673 edict is also found in the official correspondance of this period. Even the Jesuit historian, Charlevoix, claimed that steps had been taken by the King to ensure quick and good justice.[19] However, one might

well ask if these had any real effect. At the beginning of the Royal Regime, the Sovereign Council seems to have taken to heart its duties to oversee inferior jurisdictions. In 1664 it forbade all judges and seigneurial attorneys to accept fees.[20] It would not appear that this order was respected for long, since in 1678 the Councillors stated that they wanted to avoid the fees incurred by the multitude of cases in which "ignorant" habitants got involved.[21] In any event, the Prévôté was never affected by this legislation and its officers always received remuneration. Other more effective measures were taken to reform Canadian justice. First, venality was never instituted in the colony. It is impossible to precisely ascertain the impact of this innovation, but undoubtedly this transformed the post into a function rather than an investment. There was no purchase price to recuperate and therefore less incentive to unduly prolong proceedings. A second point was that wages paid to colonial officials were much higher than those paid in France: the *lieutenant-general* received 700 livres, the *lieutenant particulier* 650 (500 in wages and a gratification of 150), the *procureur du roi* got 300 and the *greffier* 100.[22] Although these sums were not sufficient to ensure a fitting standard of living, they did constitute a solid base upon which other revenues could be added. The incentive to deliberately increase expenses was therefore weaker than in France. The fees which could be charged by judicial officials were rigorously set down in the *tarif* of 1677 which was revised in 1749.[23] It is difficult to ascertain whether this was scrupulously respected since several articles stipulate hourly rates which leave the door open to fraud. Occasionally the Intendant was forced to intervene to stop the most flagrant abuses, but these cases were exceptional.[24] Despite a couple of useful reforms, even Canada was still a long way from the complete gratuity advocated by royal theory.

The expenses awarded to the victor in a judicial duel incorporated several factors. The court officials' remuneration made up a small part of the total; salaries paid to *huissiers*, lawyers and *procureurs*, compensation for witnesses and the victor, as well as the *droits de contrôle* (a form of registration fee) ran up the final bill. Amongst the officials (judge, *procureur du roi* and *greffier*), the judge and *greffier* took the lion's share. The *procureur du roi*'s presence was not always required and his revenues suffered as a consequence. In short cases the *greffier* received the most since all of his writs had to be paid for, but as a case dragged on, the judge overtook him because of his higher hourly salary. In most cases, over a third of the total cost went to pay for the work of these men. The *huissier*'s fees were much more unstable. All cases required summonses and the notification of the final sentence, but the amounts claimed for these services were extremely variable.[25] Apart from these acts, the *huissier* benefited enormously from seizures and legal auctions where he acted as auctioneer. The *huissier audiencier* also received a fee for his work in the courtroom which was fixed at 2 sols 6 deniers per case in the eighteenth century.[26] In France, almost all persons involved in judicial proceedings were represented in court by a *procureur* who charged a fee for each appearance as well as for his role as consultant. In most cases, the advice of a lawyer was also required and his gratuities had to be taken into account. These became quite onerous if he had to plead in court. This

was, however, a fairly exceptional practice in civil suits and lawyers were not the main cause of high court costs. In Canada these occupations were not formally recognized by the administration, nevertheless they existed.[27] *Huissiers* and notaries would often act as *procureurs* and would demand payment for their services, as was the case for René Hubert who billed Charles Aubert de la Chesnaye for 272 livres for three years' work on his behalf.[28] Although no one could assume the title of lawyer, practitioners did fulfill their functions.[29] This type of expense was fairly insignificant in the first few years of the Prévôté's history, but the increased use of *procureurs* towards the end of the French Regime made them commonplace. By French law, all witnesses or litigants who had to lose time to go to court, could demand compensation commensurate with their social standing as evaluated by the judge. This sort of expense was fairly common in the mother country and could amount to more than half the total cost. The only requirement of eligibility was the making of a declaration at the court house to prove the validity of the claim. In Canada, compensation is rarely mentioned, perhaps because people were not aware that they had to make an official declaration.[30] In France certain judicial documents were subject to a special tax — the *droit de contrôle*. No such imposition existed in the colony which slightly diminished the burden of court costs.

Since expenses were dependant on the amount of work done by the various members of the judicial machine, the length of time that a suit was before the courts was very important in determining the total cost. A case judged in one sitting of the court normally only required that the summonses and the *greffier*'s work be paid. However, more complex litigation involving inheritance problems, bankruptcies, appeals, the surveying of property lines and even seizures for insignificant debts could incur a substantial expenditure.

While the final verdict was still pending, each side had to pay its own expenses. Thus before engaging in litigation which could take a long time to resolve, the plaintif had to be sure to have the necessary capital to see it through to the end. If he won, he recuperated almost all his outlay; often the sums charged by the *procureur* and the lawyer as well as personal expenses were moderated by the judge. These reductions rarely amounted to more than 10 percent of the total. It is difficult to determine exactly to what extent these considerations might have limited accessibility to the judicial process by preventing the poorer elements in society from seeking redress to their grievances. The hope of recuperating the money paid out in advance should have reassured those who were completely convinced that their cause was just. Fear of losing would also encourage people to think twice before going ahead with a shaky case.

Before going on to analyse detailed lists of expenses and trying to ascertain how much a case might cost, it it necessary to take a brief look at sources. At Quebec, expenses were not systematically recorded and the *greffier* more often than not simply inscribed the laconic phrase "et aux dépens" after the final sentence. Hence, the occasional details which have been found are difficult to interpret. Complete lists are fairly often extant for the most complex cases, and

some were found in the *Collection de pièces judiciaires et notariales* (NF 25) in the National Archives of Québec. Apart from several nice examples, this type of document is too rare to undergo quantitative analysis and gives undue emphasis to the longest and most expensive cases. They are not, therefore, representative of the majority of court business and summary jurisdiction is completely absent. Although the sources do not permit an overview of court costs, they do invite a comparison with those of a French bailliage whose records, albeit more complete, suffer from the same bias.

In France after the final decision was reached, the *procureur* of the winning side drew up a complete list of all his client's expenses. This list was then evaluated by an official who had to decide whether the claims were justified. The court costs were never questioned and the *huissier*'s fees rarely diminished. Salaries paid out to the *procureur* and lawyer as well as compensation demanded by the victor were quite often trimmed slightly. Once the official had approved the list and added his remuneration, it was forwarded to the other party who could appeal specific items — a rather unusual occurence since a judge had already given his assent to them. These documents enumerate all the expenses of one side as well as the court officials' charges; those of the unfortunate adversary for his *procureur*, lawyer and occasionally a *huissier* are not included. Apart from these internal deficiencies, such lists completely neglect all cases in which expenses were awarded in the courtroom. Despite these problems, an analysis of these documents does give an idea of the cost of the most expensive type of litigation as well as the relative importance of each contributing factor.

This study is based on 289 detailed lists of expenses for civil suits at the Bailliage of Falaise for the years 1715-1720 and 1750-1762.[31] Data was tested to ensure that both periods exhibited the same structure and no major discrepancies were discovered.[32] Forty-seven of these lists (all those found between July 1, 1753 and December 31, 1754 at the Bailliage and for the year 1750 at the Bailliage vicomtal) were systematically examined to determine which factors contributed most to expenses. These cases are representative of the general distribution of costs (see figure 1).

The legendary dearness of French justice is not very apparent from data uncovered. Almost 60 percent of the most expensive types of cases cost between 20 and 100 livres; more than 80 percent were below 150 livres! It is true that 10 percent incurred expenditures over 200 livres, but this does not seem to be excessive proportion. The most expensive case on record amounted to almost 1200 livres, but this was indeed exceptional. Although most suits could cause temporary financial difficulties for a peasant or an artisan, they were not out of reach, and it would seem to be an exaggeration to say that they were ruinous. For a merchant, the outlay of capital would not be of great concern.[33]

When examining the different elements of expenses, it becomes clear that they were very variable. The least stable of these was the compensation claimed by litigants which could cause costs to escalate rapidly. This type of expenditure

Figure 1. Distribution of court costs at the Bailliage of Falaise

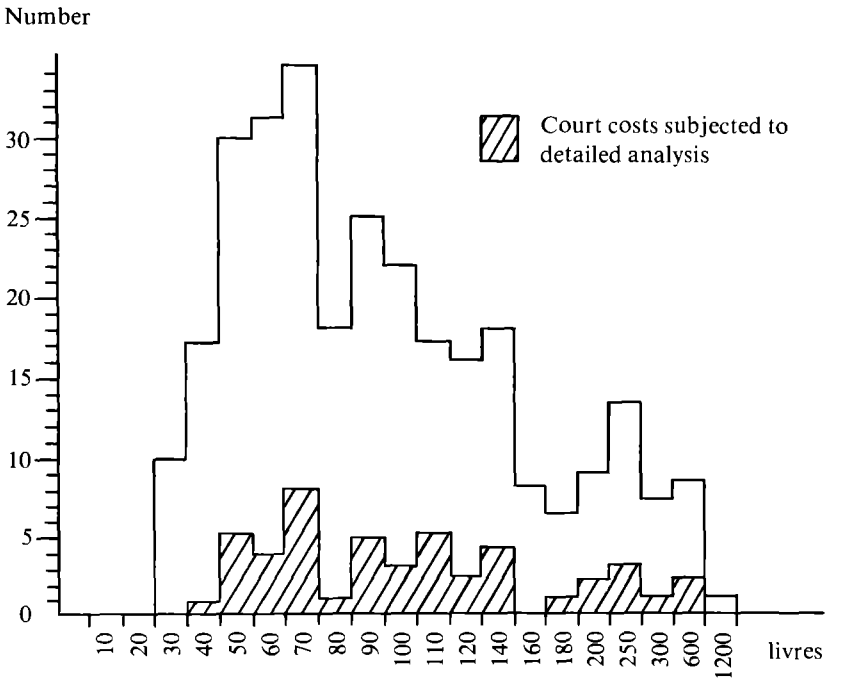
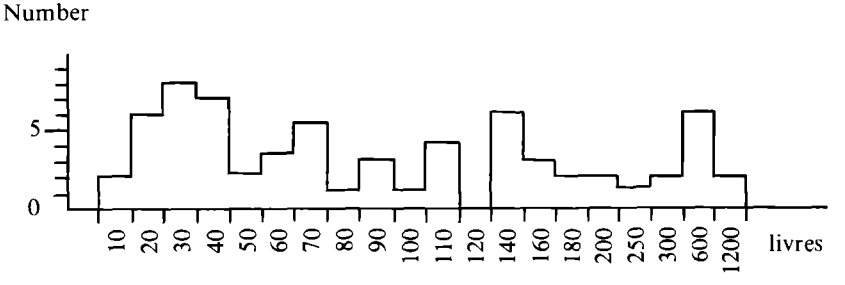


Figure 2. Distribution of court costs at the Prévôté of Quebec



represented 19.6 percent of the total cost on the average, but as suits became more expensive it tended to become more important, and was generally above this figure when the total exceeded 90 livres. In the most expensive case analysed, compensation accounted for 65 percent of expenses! The court officials' exactions averaged out at 37 percent of the total. A relatively major factor in affairs which cost under 65 livres, they became more variable as the total increased and, in general, took a smaller place. *Huissier*'s fees varied considerably around their average of 22 percent. Thus the members of the judicial administration received 59 percent of the total expenses on the average. Lawyers and *procureurs*, often singled out as major villains in making French justice expensive, only got an average of 12.3 percent of the total. Also it was the *procureurs* not the lawyers, who were the greediest; they received four times as much as the latter. Finally the *droits de contrôle* represented just over 9 percent of the total cost. Expenses which did not officially exist in Canada (lawyers and the *contrôle*) or those which were not obligatory (*procureurs*), only made up just over 20 percent of the total in France.

For the Quebec Prévôté, only sixty-six cases where expenses were clearly indicated could be found,[34] and these have been incorporated in figure 2. The small number of examples over a fairly long period defies a very sophisticated analysis or definitive conclusions. Several characteristics can, however, be ascertained; costs were slightly lower on the average than in France, but could occasionally be as expensive. The absence of the *droits de contrôle*, the relatively scant use of *procureurs* and the rarity of demands for compensation explain the first characteristic. Judicial costs were similar and could be equally as expensive. Several other indications of judicial expenses are extant, but they either omit the cost of the final sentence or the *huissier*'s fees. For the month of July in the years 1755-1758 as well as for October 1758, 144 such indices were recorded.[35] Seventy-six included costs before the final verdict ("les présentes non comprises") and sixty-eight seem to be court costs without the salaries of the *huissier*. In the first group, 60 percent of the examples were below 5 livres and if the fees of the *greffier* and the *huissier* for the drawing up and notification of the sentence were included (at least 1 livre 17 sols), the total would probably be indicative of the cost of a summary case. In the other group, a majority of examples were found to be between 7 and 15 livres. This represents what the judge, *procureur du roi* and *greffier* might expect from a case lasting two or three sittings. This data is difficult to interpret, but it does warrant the definitive laying aside of the tenacious old myth of free justice.

The structure of court costs does not seem too different in the colony and the mother country, but another factor must be taken into consideration: the duration of cases. It has already been pointed out that the detailed lists of expenses gave undue weight to the longest and most expensive suits both at Falaise and Quebec. Therefore, it is important to ascertain what proportion of cases could be included in this group and whether there was any evolution.

For the analysis of duration, sources on Quebec are superior to those

available for Falaise. At the Prévôté, all the cases for the years 1685-1689, 1715-1720 and 1750-1753 were analysed. Only two slight problems arose. The first concerns the data for the extremities of the periods under observation: suits could begin before or end after thereby underestimating duration. The impact of this problem is limited considering the overall structure of four to six year periods. The second problem is that the length of time elapsed only takes into account the number of days between the first appearance before a judge and the final verdict. The time between the first writ and the first appearance is not known because data on this factor is too sparse for systematic analysis. It would seem, however, that the maximum delay would be about a week for urban residents and not much more than a month for habitants living in isolated rural areas. For Falaise, the data found in the detailed lists of expenses must suffice. This gives the first date at which a litigant consulted his *procureur* and that of the final sentence. Some idea can thus be gained for the longest trials. For summary cases, only the years 1766-1772 offer any data, thanks to the preservation of special registers for this type of litigation.[36] It is impossible to tell whether this data is valid for the entire eighteenth century, but at least it affords a point of comparison.

At Quebec, only a minority of suits had to go before the court more than once, but an evolution is apparent between 1685 and 1750 (see table I). At the end of the seventeenth century, only 13.6 percent of all litigation lasted more

TABLE I

THE LENGTH OF CASES AT THE QUEBEC PREVOTE

YEARS	1685-89	1715-20	1750-53
Number of cases lasting more than one sitting	186	338	753
as percentage of total	13.6	19.5	34.6
average duration (days)	70.7	47.8	40.8
maximum duration (days)	1,230	1,001	917
minimum duration (days)	1	3	1

than one appearance, but as time went by, this proportion increased until more than a third of the cases fell into this category at the end of the French Regime. The number of appearances required follows the same evolution (see table II). The average duration on the other hand diminished. At first glance this would seem paradoxical, but the main reason is that the proportion of cases lasting more than six months was cut in two. Between 1685 and 1715, the percentage of cases finished in less than four weeks was stable and the most dramatic rise was in those that lasted between 28 and 41 days. In 1750, more than a third of the suits lasted between 7 and 13 days (see figure 3). This would seem to imply that some cases judged in one sitting in the seventeenth century required two at the end of the French Regime. With a much greater number of people coming before

him at each session, the judge could no longer take the time to go into things in depth and had to set aside more difficult litigation before reaching a final decision.

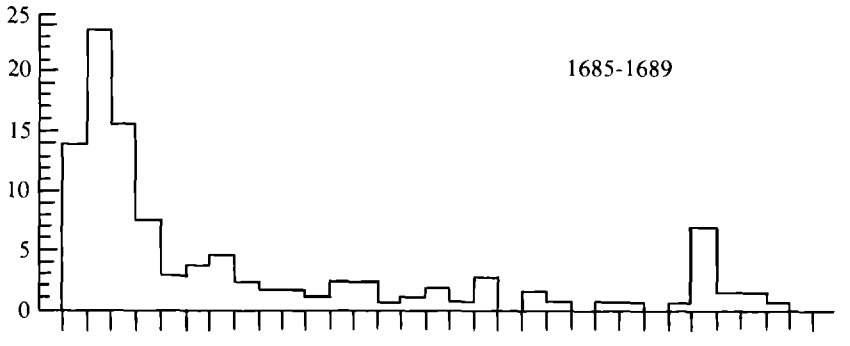
TABLE II

NUMBER OF APPEARANCES REQUIRED FOR A CASE AT QUEBEC

Number of appearance		2	3	4	5	6	7	8	9	10	11	12	15
1685-89	Number	145	32	5	4								
	Percentage	78 .0	17.2	2.7	2.1								
1715-20	Number	268	43	16	8	2					1		
	Percentage	79.3	12.7	4.7	2.4	0.6					0.3		
1750-53	Number	527	128	52	21	8	3	1	6	3	2	1	1
	Percentage	70.0	17.0	6.9	2.8	1.1	0.4	0.1	0.8	0.4	0.3	0.1	0.1

At Falaise, only one half of the longest cases were over in less than six months in the 1750's as compared to 95 percent at Quebec. Canadian justice would, therefore, appear to be much more expeditious. However, the French counterpart was not quite as "eternal" as some ordinances make out: 75 percent of the cases were over within a year and the longest lasted eight years and ten months (see figure 4). If most litigation was of short duration in the colony, some exceptions can rival the worst French examples. The problems over Olivier Morel de la Durantaye's succession lasted at least fourteen years and nine months,[37] and the heirs to Pierre Haimard's estate were still squabbling over property thirty years after his death![38] All of the data uncovered only concerns one level of justice and it is possible that appeals in France took longer than in

Figure 3. Duration of cases that go beyond one appearance at Quebec.



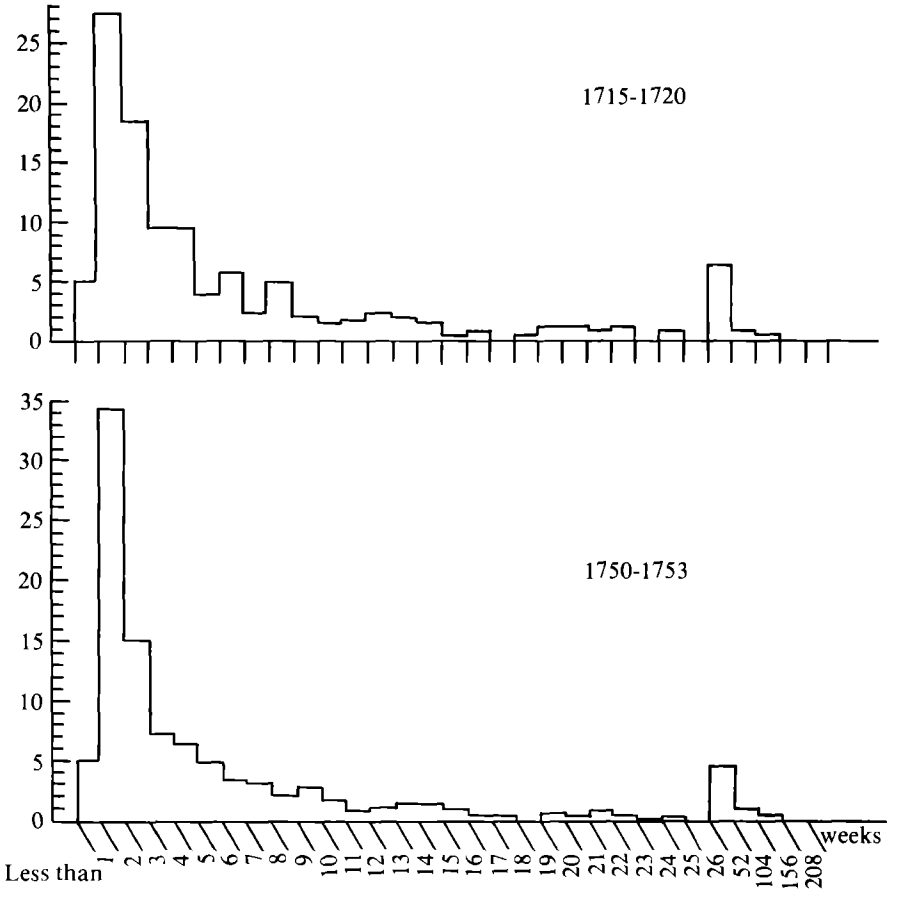


Figure 4. Duration of cases at Falaise in the 1750's

Canada. However, only a small minority of decisions found their way to a higher tribunal and in Canada some of these also lasted a long time.[39] Besides the fact that cases generally lasted longer in France, more got beyond one appearance. For the years 1766-1772, 55 percent of cases did not fall under summary jurisdiction at Falaise as opposed to 34.6 percent at Quebec for the period 1750-1753. Even if the Prévôté had a closer resemblance to the French courts at the end of its history, it still was far behind in this respect.

Conclusions

This study has clearly revealed a couple of characteristics of Canadian justice in the French Regime. It was relatively expeditious and the expenses involved were lower than those in France. Too much optimism, however, is not warranted. Gratuity was still a dream and some cases could bury their authors and occasionally ruin families. These cases were exceptional, but they did exist. The main distinction between the two systems was that fewer cases in Canada got beyond the critical stage of one appearance, but this was due more to the level of judicial activity and to a lesser extent on the nature of the litigation, than to any substantial difference in the administrative structures.The expenses incurred were similar except for the *droits de contrôle* which were not very significant in the total picture. Canadian justice also protected itself from the devaluation of colonial currency be exacting its fees in "monnaye de France"; a fact which reinforces the validity of the comparison. On the other hand, French justice was neither as immortal nor as ruinous as has often been claimed.

It is much more difficult to precisely measure the impact of court costs on accessibility. Apart from the great variability in total costs and the duration of cases, the appreciation of these elements differs from one person to the next and is very relative. A suit involving a carpenter or a mason which lasted for two months in the winter when these trades were unemployed would not be very troublesome, whereas one which forced a peasant to abandon his land for a week in May or June would be much more serious. Expenses totalling 10 livres would have a completely different significance for a merchant and a labourer. Daily wages in Canada might have been higher than in France, but the inactive period was longer and the total annual income barely superior.[40] In rural areas which were outside the market economy, ready cash was lacking and the slightest outlay of funds would constitute a considerable sacrifice.[41] On the other hand, for merchants and the colonial elite, fees must have appeared quite insignificant and since they could afford a *procureur*, no valuable time was lost. Hence, in Canada as elsewhere, justice was easier for the rich. Although the judicial administration was within the reach of the majority of the colonial population, artisans and habitants would have to seriously consider all the possible implications before engaging in a judicial duel.

NOTES

*Research for this paper was carried out while the author was on a Canada Council Doctoral Fellowship.

[1] Marcel Marion has made a concise summary of these grievances in his *Dictionnaire des institutions de la France au XVIIe et XVIIIe siècles* (Paris, 1972), pp. 314-315.

[2] Roland Mousnier, *La vénalité des offices sous Henri IV et Louis XIII* (Rouen, s.d.), p. 53.

[3] Olwen H. Hufton, *Bayeux in the late Eighteenth Century, A Social Study* (Oxford, 1967), p. 7.

[4] Mousnier, *op. cit.*, p. 426.

[5] Philip Dawson, *Provincial Magistrates and Revolutionary Politics in France, 1789-1795* (Cambridge, Mass., 1974), p. 53.

[6] Louis-Armand de Lom d'Arc de LaHontan, *Voyages du Baron de LaHontan dans l'Amérique septentrionale* (La Haye, 1705), Vol. I, pp. 20-21. "Je ne vous dirai point si la justice est ici plus chaste et plus désinteressée qu'en France, mais au moins si on vous la vend, c'est à bien meilleur marché. Nous ne passons point par les serres des avocats, par les ongles des procureurs, ni par les griffes des greffiers; cette vermine n'a pas encore affecté le Canada. Chacun y plaide sa cause, notre Thémis est expéditive, elle n'est point herissée d'épices, de frais, de dépens".

[7] Francis Parkman, *The Old Regime in Canada* (Boston, 1898), p. 270; Lionel Groulx, *La naissance d'une race* (Montréal, 1930), p. 100. Filteau, who traces an idyllic image of Canadian justice, claims that people went to court too often because justice was so cheap and trials only lasted a couple of days. Gerard Filteau, *La naissance d'une nation. Tableau du Canada en 1755* (Montréal, 1937), Vol. I, pp. 108-109. As far as G. Lanctot is concerned, Justice was free until 1677 and then very reasonable thereafter. Gustave Lanctot, *Histoire de la Nouvelle-France*, Vol. II, *Du Régime royal au traité d'Utrecht, 1663-1713* (Montréal, 1963), pp. 21-22.

[8] William John Eccles, *France in America* (Toronto, 1973), pp. 73-75. In his preceding synthesis, he was much more laudatory. *The Canadian Frontier, 1534-1760* (New York, 1971) p. 77.

[9] Raymond Dubois Cahall, *The Sovereign Council of New France* (New York, 1915), pp. 259-260; and Jean Delalande, *Le Conseil souverain de la Nouvelle-France* (Québec, 1927), p. 140.

[10] André Morel, "La justice criminelle en Nouvelle-France", *Cité Libre*, XVI, no. 53, 1963, pp. 29-30. A. Lachance gives data in his thesis and estimates that judges received an annual average of 446 livres 17 sols and 6 deniers from trials. However, he often neglects the *huissier*'s fees and compensation for witnesses. André Lachance, "La justice criminelle du roi en Canada, 1712-1748", unpublished D. ès L. dissertation, Université d'Ottawa, 1974, pp. 65, 429-434.

[11] J.R. Thompson's study is based on too few concrete examples, and she does not seem to understand the workings of the judicial machine. Jean R. Thompson, "An Evaluation of Judicial Fees in Cases Brought before the Sovereign Council, 1663-1690", *Revue du Centre d'Etude du Québec*, 3, mai 1969, pp. 9-18.

[12] André Frenière, "Les taxes de dépens dans le revenu des officiers de justice du Conseil supérieur: 1715-1745", manuscript study prepared for a graduate seminar under the direction of Jacques Mathieu, Université de Laval, 1972.

[13] Jacques Mathieu, "La vie à Québec au milieu du XVIIe siècle. Etude des sources", *Revue d'Histoire de l'Amérique Française*, XXIII, 1969-1970, pp. 421-422. See also "Les causes devant la Prévôté de Québec en 1667", *Histoire Sociale*, 3, 1969, p. 107.

L. Dechêne has also arrived at the same conclusions about justice at Montreal in the seventeenth century. Louise Dechêne, *Habitants et Marchands de Montréal au XVIIe siècle* (Paris, 1974), p. 367.

[14] André Vachon, "La restauration de la tour de Babel ou 'La vie à Québec au milieu du XVIIe siècle' ", *Revue d'Histoire de l'Amérique Française*, XXIV, 1970-1971, p. 248. Vachon is one of the most ardent defenders of the idea of cheap justice because this supports his thesis that judicial officials were poor. See his numerous biographies in the *Dictionary of Canadian Biography* and his *Histoire du notariat canadien, 1621-1960* (Québec, 1962), pp. 44-45. His observations are often questionable. John A. Dickinson, "la justice seigneuriale en Nouvelle-France: Le cas de Notre-Dame-des-Anges", *Revue d'Histoire de l'Amérique Française*, XXVIII, 1974-1975, p. 340.

[15] F.A. Isambert *et al.*, *Receuil général des anciennes lois françaises* (Paris, s.d.), XII, p. 513. Edict of Valence, 30 August, 1536.

[16] The preamble to a 1669 edict states that: "l'administration de la justice (est) le premier et principal devoir des rois" *Ibid.*, XVIII, p. 325. Although not quite so explicit, the edicts of Villers Cotterets (1539), Orléans (1561), Rousillon (1564) and Blois (1579), all reflect the same preoccupation. *Ibid.*, XII, p. 600; XIV, pp. 73, 167-168, 412, 416, 419.

[17] *Ibid.*, XVIII, p. 103.

[18] *Ibid.*, XIX, p. 86.

[19] Pierre-François-Xavier de Charlevoix, *History and General Description of New France* (Chicago, s.d.), Reprint of Shea's 1870 edition, Vol. III, p. 69.

[20] *Jugements et Déliberations du Conseil Souverain*, Vol. I, p. 297 (Hereafter *J.D.C.S.*). It is noteworthy that this regulation only concerned the judges and the seigneurial attorneys. The *greffiers* and *huissiers* were not affected and continued to demand fees for their services. Thus, seigneurial justice was never completely free as Filteau claimed. Filteau, *op. cit.*, I, pp. 106-107.

[21] *Edits, Ordonnances royaux, déclarations et arrêts du Conseil d'état du Roi concernant le Canada*, Imprimés sur une adresse de l'Assemblée Législative du Canada, Québec, F.R. Fréchette, 1854, Vol. I, pp. 106-107 (Hereafter *Edits et Ordonnances*).

[22] Guy Frégault, *Le XVIIIe siècle canadien. Etudes* (Montréal, 1968), pp. 189. The situation is completely different in France where the taxes on judicial posts (the *prêt* and *annuel*) were sometimes greater than the wages. The Vicomté of Falaise illustrates this:

Position	Wages	Prêt	Annuel	Purchase price
Vicomte, maire, sénéchal conservateur des foires de Guibray, juge de police, enquesteur et commissaire examinateur	464.10	524. 8. 8	131. 2. 2	120,000
Lieutenant-général	—	—	—	10,500
Lieutenant particulier	25	—	—	6,000
Procureur du roi et deuxième substitut	47	—	—	15,000
Procureur du roi de police, avocat du roi et substitut	255	134.14	44.18	23,550
Procureur du roi de police, avocat du roi et substitut	273	134.14	44.18	23,550
greffier	—			49,389

Several positions were held by the same person. Regardless of royal ordinances, all the officials with the exception of the vicomte, were also officials at the Bailliage. Archives départementales du Calvados, *Bailliage de Falaise*, 3B, 1408 bis, Enquête sur les juridictions de 1740.

[23] *Edits et Ordonnances*, I, pp. 99-102.

[24] The best example of this is Hocquart's 1739 ordinance concerning Montreal. *Ibid.*, pp. 380-382.

[25] In town a *huissier* only got 8 sols for a summons, but if a trip was necessary, his fees could escalate rapidly. Thus, two *huissiers* received 44 livres 2 sols for nine summonses. *J.D.C.S.* II, p. 420. Nicolas Metru got 10 livres for delivering a writ on the Island of Orleans in 1685. *Ibid.*, II, p. 1009. Sometimes the litigants felt that these fees were exhorbitant: Jean Cognet who had demanded 36 livres for two days of travel and eleven summonses, was taken to court by Pierre Moison. The judge upheld Cognet's demands! Archives Nationales du Quebec, *Registres de la Prévôté* (NF 19), 47, 14 July, 1705.

[26] During the 1670's, the *procureur du roi* continually complained that the *huissiers* did not attend sessions of the court. *Ibid.*, 3, 9 December, 1670. To remedy this situation, *huissiers* were ordered to take turns attending sessions, but after several years of frustration, a single *huissier audiencier* was appointed: "Attendu la faute de comparoir par les huissiers en exécution de ce qui avait été par nous ordonné pour les audiences Nous avons ordonné Levasseur huissier, seul huissier audiencier comme au profit duquel sera porté les amendes de l'audience à l'exclusion des autres huissiers". *Ibid.*, 7, 23 October, 1674. In 1706, the Superior Council gave Jean Prieur, *huissier audiencier*, 2 sols 6 deniers for every case (he had asked for 4 sols). *J.D.C.S.* V, 244. This decision was registered at the Prévôté on February 12, 1706.

[27] The use of *procureurs* underwent a definite evolution during the French Regime. In the first years of the Prévôté's operation, only a little over 10 percent of litigants were represented by a third party before the court, and in half of these cases it was the wife or a relative that was present. Mathieu, "La vie à Québec", p. 415, and "Les causes devant la Prévôté", p. 109. By the end of the seventeenth century there had been little evolution as only 15 percent did not attend in person. The profession of the procureur had, however, changed: *huissiers* had taken the place of kin. During the first third of the eighteenth century, the use of *procureurs* became more frequent (nearly 25 percent of litigants) and the *huissiers* maintained their dominance. In the 1740's over a third of the parties made use of this service. *Huissiers* started to be replaced by notaries and practitioners who became specialists in this field. This trend became even more evident in the last decade of the Regime when over half of the litigants used *procureurs* who were notaries or practioners in 75 percent of the cases. This analysis was based on the examination of the cases in July of each year.

[28] A.N.Q., *Registres de la Prévôté* (NF 19), 22, the case began on January 8 and the final sentence was handed down on March 1, 1686. Litigants did not always readily pay their *procureurs*. A fellow named Canac complained bitterly that Jean-Claude Panet, soldier and practitioner (he was later to become a notary) had charged him 58 livres for his services, but that he had only done 14 livres worth of work! A.N.Q. *Collection de pièces judiciaires et notariales* (NF 25), folio 4254.

[29] This is the only logical explanation for an item in a detailed list of expenses at the Admiralty court which gave Louis Chambalon 50 livres for consultant fees. *Ibid.*, folio 505. In another list, Jacques Barbel received 75 livres for his "peines" and it would seem reasonable to assume that part of this was for his services as a lawyer. *Ibid.*, folio 643.

[30] This could be considered one of the disadvantages of not having a *procureur* who would certainly have informed his client of this requirement. In some cases people did get compensation, but had to go out of their way for it. For example, a woman got the Council

to force her father-in-law to pay 90 livres for her upkeep while she was waiting for a hearing before the Governor. *J.D.C.S.*, I, pp. 556-557.

[31] Archives départementales du Calvados, *Bailliage de Falaise*, 3B, pp. 203-213, 684-687, 285-294, 1732-1733. All the extant detailed lists have been analysed for these years, but they only represent about 10 percent of what once existed. The sample, although it is as complete as possible, is at the mercy of document conservation. Is it representative? There is no way of being certain, but the wide range of expenses uncovered encourages one to think so. There were 82 lists for the period 1715-1720 and 207 for 1750-1762.

[32] Distribution of expenses in the two periods is similar. However, the fact that nominal values remained stable during the first half of the century, reflects a decrease in real terms because of inflation.

[33] It is difficult to estimate the impact of expenses on a population in the eighteenth century since little precise data is available on revenues. The only thing that is clear is that the same sum did not mean the same thing for different levels in society. An interesting article on this subject is Jean Meyer, "La noblesse pauvre: une question mal posée", *Revue d'Histoire Moderne et Contemporaine*, XVIII, 1971. For an evaluation of labourers' wages see Fernand Braudel, Ernest Labrousse *et al.*, *Histoire économique et sociale de la France*, Vol. II, *Des derniers temps de l'âge seigneurial au prélude de l'âge industriel (1660-1789)* (Paris, 1970), pp. 665-672.

[34] Most of these come from the *Collection des pièces judiciaires et notariales* (NF 25) and the *Registres de la Prévôté* (NF 19). André Lachance found that half of the criminal proceedings cost less than 50 livres. However, about 10 percent cost more than 200. Lachance, *op. cit.*, Annexe C.

[35] A.N.Q. *Registres de la Prévôté* (NF 19), pp. 103-104, 107-108, July 1755 to October 1758.

[36] Archives départementales du Calvados, *Bailliage de Falaise*, 3B, pp. 1433-1437, 1439-1442. No *juge consulaire* existed at Falaise and this type of procedure was handled at an ordinary sitting as prescribed by title XVII of the Civil Ordinance of 1667. Litigants had to plead their case in person without the assistance of a lawyer or a *procureur* and the sentence had to be given immediately. There was to be no remuneration for the judge. Isambert, *op. cit.*, XVIII, pp. 128-129.

[37] A.N.Q., *Collection de pièces judiciaires et notariales* (NF 25), folio 1194. The case begins on 9 March, 1724 and the final verdict is given on 1 October, 1738.

[38] Haimard died in 1724 and in 1753 the heirs were still trying to divide his fiefs of Mont Louis and Paspébiac. A.N.Q. *Registres de la Prévôté* (NF 19), pp. 94, 98-100, *passim*..

[39] Three examples are: Ferret *vs* Maheu whose sentence at the Prévôté was given on 7 August, 1674 and whose appeal was judged on 7 January, 1686 (*J.D.C.S.*, III, p. 4). Gaultier *vs* Petit whose first sentence was on 23 October, 1671 and the last on 19 April, 1687 (*J.D.C.S.*, III, pp. 144-165). Finally Garros *vs* Alain who were at the Council on 19 April, 1687 to appeal a Prévôté decision dated 16 August, 1674 (*J.D.C.S.*, III, pp. 165-168).

[40] C. Nish gives some salaries in his study on the bourgeoisie, but his analysis leaves several questions unanswered. A labourer who received 50 livres per month did not necessarily work twelve months a year, and his annual income was undoubtedly less than 600 livres. Cameron Nish, *Les bourgeois-gentilshommes de la Nouvelle-France, 1729-1748* (Montréal, 1968), pp. 39-42. Dechêne and Hamelin underline the poverty of most skilled labourers who were under-employed if not unemployed. Dechêne, *op. cit.*, pp. 392-398, and Jean Hamelin, *Economie et société en Nouvelle-France* (Québec, 1960), pp. 64-67.

[41] Habitants' fortunes in the seventeenth century seem to be very small, and the subsistence farming practised did not provide much revenue in cash. Dechêne, *op. cit.*, pp.

344-346, 398-402. Even in the eighteenth century when better opportunities for commercialization were available, the area of arable land cleared was restricted and kept the majority of farmers "parmi la population marginale de la colonie". Hamelin, *op. cit.*, pp. 67-71. Some points of this rather pessimistic view have recently been challenged by F. Ouellet in a review of Dechêne's book, *Histoire Sociale*, 16, 1975, pp. 372-382. The debate is far from resolved. The integration of rural districts into a market economy would appear to have been very slow and unequal.