MANITOBA COURT OF QUEEN'S BENCH IN EQUITY, 1872-1895: A STUDY IN LEGAL ADMINISTRATION AND RECORDS

by

SHARON GAIL McCULLOUGH

A THESIS
SUBMITTED TO THE FACULTY OF GRADUATE STUDIES
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

Department of History (Archival Studies)
University of Manitoba
Winnipeg, Manitoba

October, 2000

THE UNIVERSITY OF MANITOBA

FACULTY OF GRADUATE STUDIES

*****

COPYRIGHT PERMISSION PAGE

Manitoba Court of Queen's Bench in Equity, 1872-1895:

A Study in Legal Administration and Records

BY

Sharon Gail McCullough

A Thesis/Practicum submitted to the Faculty of Graduate Studies of The University of Manitoba in partial fulfillment of the requirements of the degree of Master of Arts

Abstract

The Manitoba Court of Queen's Bench in Equity began to administer justice in 1872. Functioning as a "side" of Queen's Bench, Equity resolved civil disputes on the basis of fairness and good conscience. It complemented common law, but unlike that branch, it was not bound by precedent. Rather it employed flexible remedies such as injunctions and orders for specific performance. The operations of Equity generated a quantity of records that is valuable for its unique reflection of the court system and of the society from which that system sprang.

This thesis postulates that Manitoba's Equity records were created to serve the administration of equitable justice, that equitable justice is based on the underlying need for equity, and that the need for equity has coursed through many centuries of Western judicial history. The thesis argues that equitable treatment has been applied in a continuously evolving court environment, and that equity remains today a critical element in the justice system

These posits are explored through three main themes. First, the thesis examines the development of equity in the English court of common law, and, later, in the court of Chancery. Equity's transference to Canada and Manitoba is identified and examined as a carrier of English law, and as a court system capable of adaptation. Second, the thesis considers the early histories of Manitoba's Court of Queen's Bench and Court of Queen's Bench in Equity.

Equity jurisdiction is studied in detail, and the personnel associated with the two sides of the court are profiled. Last, the thesis focuses on the records themselves. Their organization and interrelationships, embedded in the record keeping systems, are analyzed. The records' physical characteristics are scrutinized for clues to the original creation and retention of the documents.

This threefold thematic inquiry is based on and inspired by the contextual approach in archival studies. The contextual approach embodies concepts whose utilization empowers archivists and users of archives. This approach emphasizes the importance of knowledge of the nature and evolution of administrative structures. It stresses understanding of the functions of institutions, their record keeping systems, and the individual documents created on those systems. This information enables and promotes better understanding and archival administration of records such as those of the Manitoba Court of Queen's Bench in Equity.

Table of Contents

Acknowledgements

Many people have influenced the writing of this thesis. I would particularly like to express my gratitude to Dr. Tom Nesmith. His enthusiasm and knowledge have prompted my interest and research in the field. His sense of perspective and unfailing support have been significant to the continuing work and eventual completion of the project.

I would like to thank Manitoba Provincial Archives staff, who have facilitated my work through their willing accommodation of numerous research requests. Also of great assistance has been the efficient service of library staffs: Legislative Library of Manitoba, Law Courts Great Library, and University of Manitoba libraries, including the E.K. Williams Law Library, Robson Hall. I sincerely appreciate the good advice and ongoing encouragement provided by fellow archival students and archivists.

I would like to recognize the contribution of my family. Immediate family members have, for years, shown their generosity, tolerance and good humour. Extended family have unstintingly cheered my efforts. These supports have been very important and I am grateful for them.

Introduction

Modern society relies on its records. Each sector requires secondary representation of its actions and events. Government and commerce, education and even religion all depend on the record as purveyor and verifier of experience. Nowhere is this more pronounced than it is in the judicial/legal sector. Courts and law firms, judges and lawyers depend heavily upon the document as the medium of legal business. Indeed, it may be argued that the record is the fundamental component in contemporary conduct of legal affairs.

The importance attached to the record has meant that courts have tended to retain materials generated as a result of daily business. Documents, registers, and ledgers have accumulated over long periods of time. In Canada these materials have been recognized as archival since the nineteenth century. In the twentieth century, many records have been transferred to archival institutions. Unfortunately, there they have often languished, just as they formerly did in court-house cabinets and basements, unused, and generally little understood. Manitoba is no exception in this respect. The extensive accumulation of court records, housed at Provincial Archives of Manitoba, remains largely untapped as an historical and genealogical resource. The records' content as a product of court function, and its context as a part of wider society have yet to be exploited.

This absence reflects the relatively small amount of research that has

been undertaken on records and record keeping. A few archival writers have investigated these themes, using what might be called the contextual approach. The contextual approach examines the broad societal and administrative origins of records, and the record keeping systems that generated and held the records. This approach also focuses on the nature of the individual record, its physical characteristics, and the interrelationships between medium and content. The latter aspect of the contextual approach is known as diplomatic analysis. The various aspects of the contextual approach can be studied and employed separately or together, since they are complementary.

The contextual approach emphasizes the investigation of the administrative structures and functions of the records' creator. This inquiry often takes the form of "administrative history" which assists in understanding the meaning of records. In the early twentieth century, noted British archivist Hilary Jenkinson declared the importance of the administrative history. "Administrative history," he said, "is in general ... all important for elucidating the meaning of records ...."[1] He also acknowledged the need for diplomatic analysis and suggested a balance of the two methods:

> I will also say that no description of an administrative department ... can be complete without a description (probably including specimens) of the forms of document it produced and the way in which they were written (including facsimiles).[2]

Jenkinson's assertion has been elaborated by Canadian archivists Tom Nesmith and Terry Cook. Each has affirmed the importance of the

administrative history and each has contributed significantly to the development of the theory of provenance (origin of the record). This theory focuses in the first instance on the context in which records have been created rather than on the information content they may carry. Its aim when used by archivists is to lay out as much of the provenance or origins of the records as possible. This enables records to be better understood as evidence and thus be more meaningful and useful to researchers. Contextual information also enables archivists to manage the overwhelming physical volume and varied informational content of records by providing (among other things) an intellectual map to information in them.

Articulation of this theory is the main focus of Tom Nesmith's "Archival Studies in English-speaking Canada and the North American Rediscovery of Provenance."[3] Nesmith asserts the "fundamental significance of provenance information about records in all aspects of archival administration."[4] He argues that contextual knowledge is of paramount importance in the management of traditional records (paper) and that it is absolutely critical for electronic records. He maintains that the theory of provenance, developed for the treatment of traditional archives, has the breadth and power to support archives produced through new technologies.

Terry Cook maintains that records are the "lifeblood of an organization."[5] He argues that administrative context "is clearly essential to using the records intelligently for research purposes." Cook points out the symbiotic nature of records and administration. They are interdependent and, therefore,

investigation of the one may be used to discover information about the other. The established archival principle is to inquire "from the top down," that is, from administration towards records. However, it is also true that examination of the records themselves may be used to discover "much about the history, nature, and functions of [the] organization."[6]

Diplomatic analysis focuses on individual documents. Luciana Duranti describes diplomatics as the "study of the *Wesen* (being) and *Werden* (becoming) of documentation, the analysis of genesis, inner constitution and transmission of documents, and of their relationship with the facts represented in them and with their creators."[7] This type of analysis examines extrinsic (external) and intrinsic (intellectual) elements of documents. Extrinsic elements include types and physical forms of documents, while intrinsic elements are the categories of information that specific document types carry. The knowledge gained through diplomatic analysis adds to the overall history of the records, and may be critical in discovering the time frame of document generation, alterations in record keeping systems, and changes in the personnel who create documents.

If there has been little research undertaken on records and record keeping in general, there has been even less on court and legal records and record keeping. This may be due to the complexity of the subject. As C.J. Shepard points out, in order to understand court and legal records it is necessary for the researcher to become familiar with court and judicial structures

from their inception to the present day.[8] Knowledge of legal terminology and legal procedures is required. Acquaintance with legal forms is also needed for it provides a means of categorizing and, thus, comprehending the sheer volume of most court and legal records holdings.

Contemporary research on court and legal records has had several orientations. One focus has been the location, use, and preservation of these materials. Louis A. Knafla studied the court records holdings of Canadian provincial archives. He found that most court and judicial materials have come into archival care within the last twenty-five years or so. In his overview he discussed types of court records, their accumulation, and how they can be utilized. Knafla emphasized that court and judicial documentation must be managed through a structured archival system that can accommodate older as well as contemporary materials.[9]

The study of court and legal records has been pursued for a long time in Britain where some of the oldest documents in the Western world exist. Researchers such as L.C. Lloyd, Michael Zells, and R.W. Ambler investigated borough court records, wills, and enrolled trust deeds as sources for historical writing.[10] Robert Shoemaker combined history written from quarter session records with an analysis of the value of those materials as sources. Shoemaker argued that one of the main problems is understanding the interrelationships among the documents. In this he touched an archival nerve. A crucial element in any records accumulation is the interconnections, both physical and

intellectual, among its parts. Shoemaker's point is particularly pertinent to legal records. Their value as history, as well as their value in law, depends upon their order and arrangement, and on their association with related records.[11]

Douglas Hay picked up the theme of court and legal records as sources for historical writing. He recognized and promoted the modern research imperative, computer-based data collection and analysis. Since the requirement for this type of study is complete or nearly complete series of records Hay urged full retention of court and judicial materials. He also recommended improved retention of lawyers' papers. Hay disagreed with lawyers' contention that the law is a logical structure, unchanging, and ahistorical.[12] Instead, he asserted that the law can be illogical, that it responds to the tenor of the times, and that it is historically contingent.

A recent study has examined court and legal records as subjects in themselves, independent from the information contained therein. Juanita Skillman treated American legal documents as products of actions taken during litigation. To Skillman it was not the contents of the records, but their issue from differing legal processes that was of importance. She related the sequence of document production to the sequence of litigation, and thus provided a context for materials emanating from the functioning of the legal system.[13]

Daisy McColl, in her thesis, examined the institution and development of the British Columbia court system.[14] McColl rooted today's courts in the courts of the British past, and indicated several ways in which the British Columbia

system reflects that of its predecessor. She discussed the high level of training and expertise required of court registrars and clerks. McColl contended that the work of these officials was vital, not only to the court, but to the application and maintenance of court record keeping systems. The activities of registrars and clerks was of primary importance to the record keeping environment.

Archivist Barry Cahill also studied the development of a court system. He focused, however, on a specific jurisdiction of the Nova Scotia system, the Court of Chancery.[15] Cahill combined an administrative history of the court with description of the records, and, in doing so, revealed the interdependence of court structure, court personnel, generation of records, record keeping systems, and retention of records. Cahill's work provided an insight into a specialized area of law known as equity.

Practical application of archival knowledge saw fruition in Michele Fitzgerald's *A Research Guide to Court Records in the Provincial Archives of Manitoba.*[16] Fitzgerald undertook to classify and describe the mass of court records acquired by the Provincial Archives following institution of the Government Records program in 1981. Fitzgerald's work made available to the public materials dating back to the formation of the province, including records of the Court of Queen's Bench, the Court of Queen's Bench in Equity, the Manitoba Court of Appeal, Surrogate Courts, and County Courts. These materials are invaluable for legal, social, economic, and political history, and as a genealogical resource.

The works of the preceding authors provide the guidance for the current study. The writers' concerns with the context of records creation prompt an inquiry into the history of Manitoba's court and judicial system. Their attention to the interrelationships among records provides tools for analysis of single documents and groups of documents. Their emphasis on record keeping systems permits identification of categories of related and interconnected materials. Their recognition of records as products of actions and procedures liberates research from the narrowness of individual documents and elevates it to the holism of entire aggregations. Their examples of administrative histories derived from and describing certain court and legal holdings inspire this investigation into the history and records of the late nineteenth century Manitoba Court of Queen's Bench in Equity.

The present writer's interest in Equity records began to develop when it was discovered that little use had been made of these important materials, and that that was probably due to lack of understanding of this genre of records. It was also apparent that Equity documentation was part of a much larger body of court and judicial records that spanned the whole of the province's history. If light could be shed on Equity materials, that light might be reflected to other materials as well. A vast corpus of records could be revealed in a new perspective and clarified for the use of genealogists, historians, and the archivists under whose care court and legal records were retained.

Notes

1. Sir Hilary Jenkinson, "Archives and the Science and Study of Diplomatic," in *Selected Writings of Sir Hilary Jenkinson* (Gloucester: Alan Sutton Publishing Limited, 1980 in collaboration with The Society of Archivists), 347.

2. Ibid.

3. Tom Nesmith, "Archival Studies in English-speaking Canada and the North American Rediscovery of Provenance," in *Canadian Archival Studies,* ed. Tom Nesmith (Metuchen, New Jersey: Scarecrow Press, 1993), 1-28.

4. Ibid., 1. See also David A. Bearman and Richard H. Lytle, "The Power of the Principle of Provenance," *Archivaria* 21 (winter 1985-86).

5. Terry Cook, "Paper Trails: A Study in Northern Records and Northern Administration, 1898-1958," in *Canadian Archival Studies:* 269, quoting Graham S. Lowe, "'The Enormous File': The Evolution of the Modern Office in Early Twentieth-Century Canada," *Archivaria* 19 (winter 1984): 137.

6. Ibid., 270.

7. Luciana Duranti, "Diplomatics: New Uses for an Old Science," *Archivaria* 28 (summer 1989): 17, quoting Giorgio Cencetti, "La Preparazione dell' Archivista," *Antalogia di Scritti Archivistici,* ed. Romualdo Giuffrida (Rome, 1985): 285.

8. C.J. Shepard, "Court Records as Archival Records," *Archivaria* 18 (summer 1984): 124-125. See also Roy Schaeffer, "The Law Society of Upper Canada Archives," *The Law Society Gazette* (1987).

9. Louis A. Knafla, "'Be It Remembered': Court Records and Research in the Canadian Provinces," *Archivaria* 18 (summer 1984): 105-123. See also Philip D. Jordan, "In Search of Local Legal Records," *The American Archivist* 33, no.4 (1970); Edward Dumbauld, "Legal Records in English and American Courts," *The American Archivist* (January 1973); Dorothy Hill Gersack, "Colonial, State, and Federal Court Records: A Survey," *The American Archivist* (1973); Graham Parker, *Materials On Legal History,* 2nd ed. (York University: Osgoode Law School, 1976); Michael Hindus, "Designing Projects for Maximum Impact: Saving the Early Court Records in Massachusetts," *The American Archivist* 42, no.3 (1979); James K. Owens, "'Untouched Mines' for the Legal Scholar: Records of the Massachusetts Federal Courts in the National Archives," *Massachusetts Law*

Review (winter 1989); *The Legal Archives Society of Alberta: Annual Report 1992-93* (Calgary, 1993).

10. L.C. Lloyd, "The Records of a Borough Court in the Seventeenth Century," *Archives, The Journal of the British Records Association* 8 (1955-56): 11-15; Michael Zells, "Fifteenth and Sixteenth Century Wills As Historical Sources," *Archives* 14, no.62 (1979); R.W. Ambler, "Enrolled Trust Deeds — A Source for the History of Nineteenth-Century Nonconformity," *Archives* 20, no.90 (1993).

11. Robert B. Shoemaker, "Using Quarter Sessions Records as Evidence for the Study of Crime and Justice," *Archives* 20, no.90 (October 1993): 145-157.

12. Douglas Hay, "Archival Research in the History of the Law: A User's Perspective," *Archivaria* 24 (summer 1987): 36-46. See also Seymour V. Connor, "Legal Materials As Sources of History," *The American Archivist* 23, no.1 (1960); Richard C.B. Risk, "A Prospectus for Canadian Legal History," *Dalhousie Law Journal* 1 (1973); Jerold S. Auerbach, "Lawyers' Papers As a Source of Legal History, the Twentieth Century," *Law Library Journal* 69 (1976); Rayman K. Solomon, "Legal History and the Role of Court Records," *The American Archivist* 42, no.2 (1979); Catherine Shepard and Peter Oliver, "The Osgoode Society, the Archivist and the Writing of Legal History in Ontario," *The Law Society of Upper Canada Gazette* 14 (1980); DeLloyd Guth, "Réflexions sur les archives judiciaires de l'ouest du Canada," *Archives* 22 (1991): 131-138.

13. Juanita Skillman, "Understanding Discovery: A Records Manager's Role in Litigation Support," *Records Management Quarterly* (October 1991): 26-27, 36.

14. Daisy McColl, "An Administrative History of the Supreme Court of British Columbia with Particular Reference to the Vancouver Registry" (MA thesis, University of British Columbia, 1987). See also Heather Heywood, "Appraising Legal Value in Records: Concepts and Issues" (MA thesis, University of British Columbia, 1990); Michael Gourlie, "The Records of Lawyers: Archival Appraisal and Access" (MA thesis, University of British Columbia, 1994).

15. Barry Cahill, "Bleak House Revisited: The Records and Papers of the Court of Chancery in Nova Scotia, 1751-1855," *Archivaria* 29 (1989-90): 149-163.

16. Michele Fitzgerald, *A Research Guide to Court Records in the Provincial Archives of Manitoba* (Winnipeg, 1994).

Chapter 1

Equity in the Courts of England, Colonial Canada, and the Red River Settlement to 1870

English law is the prevailing system of law in the English-speaking world today. It spread with the expansion of the British Empire and remains the system in use in most of the former colonies. In Canada nine provinces base their private law on English common law.[1] Common law, and the equitable rules that it spawned, are integral components of the English law that has widely served the administration of justice.[2]

Common law developed during the two centuries after the Norman Conquest of 1066.[3] William the Conqueror introduced a system by which itinerant justices travelled the country hearing cases and monitoring local administration and tax collection. Between circuits the justices sat at the royal courts at Westminster. There, through discussion and compromise, they worked out a body of law that was "common" to all areas of the country.[4] This law was marked by the singularity of its authority. Power was centralized in the king and that promoted development of a uniform common law, rooted in the case-based judgments of royal courts of record.

Legal proceedings in common law commenced or "originated" with a plaintiff procured writ.[5] By 1300 numerous forms of "original writs" were available but, nevertheless, it was often difficult for a plaintiff to obtain one that

conformed to the wrong for which he sought redress. If the writ was inexact he could be denied further access to a remedy. In addition, the writs were so expensive that many injured parties could not afford to initiate a suit.[6]

There was another difficulty with the administration of justice. When the common law was in its formative stages, judges had considerable flexibility in administering the law. They could make "equitable" decisions, citing the authority of "natural law" and "God's law." In the thirteenth century judges began to refer to precedent or decisions taken previously.[7] Reliance on precedent increased, even though this method was often too rigid to accommodate the dispensing of fair justice. The restrictions of the Latin writs, the inflexibility of precedent, and other problems forced plaintiffs often to petition by English bill directly to the king for reliefs and remedies allegedly not available in his common law courts (King's Bench, Common Pleas, Exchequer). By the mid-fourteenth century, to alleviate the situation, the king had delegated hearing the growing number of direct petitions to his Lord Chancellor, who in turn created a formal Court of Chancery, also known as Court of Equity or sometimes of Conscience.

Equity has more than one meaning. Frederic W. Maitland declared equity to be a "gloss," or a collection of appendices to the law.[8] Henry Maine spoke of equity as "any body of rules existing by the side of the original law, founded on distinct principles and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles."[9] He explained that equitable doctrines often develop when the law does not change to meet the needs of

society. A corpus of rules forms, often originating in a judge's sense of fairness, reasonableness and good conscience, to "fill in the gaps" in the strict literalness of the law.[10] These rules are not a complete system of law, but stand as a complement to it.

Application of the maxims of equity mediates the harshness of the law. These principles (collected in the eighteenth century) are characterized by humaneness and common sense. Their "softening" and sensible qualities may be seen in the following examples: He who comes to equity must come with clean hands; He who seeks equity must do equity; Equity does not suffer wrongs to be without a remedy; Equity acts on the conscience; Equitable remedies are discretionary; Delay defeats equity; Where there are equal equities the first in time prevails.[11]

The Court of Chancery was, from the beginning, strongly associated with the person of the chancellor who, as a member of the king's council, had considerable power and authority. He played a key role for the common law courts as head of the Chancery office, which issued their original writs. The chancellor became an approach to justice for citizens who had been wronged and could not obtain satisfaction through the courts of common law. An appeal to the chancellor did not require a writ. An injured party simply petitioned the chancellor with a "bill," which could even be communicated verbally and later, at court, committed to writing. A copy of the bill was issued to the defendant, together with a command to answer to the complaint.

The command was conveyed through a specialized form of writ, the "writ of subpoena," devised by Chancery about 1350. This differed from a common law writ. An injured party bore the responsibility for obtaining a common law writ in order for an action to commence. Responsibility for a writ of subpoena, however, lay with the Court of Chancery. The subpoena, served by the court in the name of the king, ordered the defendant to appear, under penalty of a specified money forfeiture. Failure to appear automatically placed the defendant in debt for the stated amount.

Chancery also introduced two other important written procedures that facilitated the administration of justice. The affidavit was (and is) a written statement, given under oath and witnessed by a person, such as an officer of the court or a notary public, authorized to certify such a statement. The affidavit enabled testimony to be taken as a written document, rather than as an oral account. It was later to result in the accumulation of thousands of such records in the Public Record Office in England.

Similarly, the interrogatory made its appearance as a written rendition of evidence. It consisted of a formal list of questions that the plaintiff and defendant required to be answered from each other or from witnesses. Two or more persons were commissioned to gather the evidence, which, in this way, could be obtained even from distant locations.

Judges at common law directed their efforts towards seeking redress for the plaintiff. In contrast, the chancellor sought to cleanse the conscience of the

defendant. An important component of this cleansing was restitution or repair of the wrong committed by the individual. The chancellor, therefore, focused on examination of the defendant whose conscience required unburdening. The examination might also be extended to the plaintiff and to witnesses. There was no jury and all matters that proceeded through the Court of Chancery were ultimately decided by the chancellor, or at least in his name.

The Court of Chancery, unlike the common law courts, had at its disposal the persuasive remedies of the "injunction" and the "degree of specific performance." There were two types of injunctions, the mandatory, "by which a person is ordered to do something positive in order to restore a previous situation which he has wrongfully disturbed," and the prohibitory, which "is one restraining the defendant from doing something which he should not do."[12] The "decree of specific performance" complemented the injunction by requiring the defendant to complete or fulfil the terms of a contract. These remedies were motivated by a positive regard for both parties in a dispute and administered by a chancellor whose flexible procedures sprang from his "good conscience."[13]

Problems arose during the Tudor period and Chancery's ability to facilitate fair justice began to be compromised by the bureaucracy needed to handle the increased numbers of petitioners. What had been the chancellor's oral and informal examination of the contesting parties often degenerated into fixed written and formal procedures. Chancellors began to make decisions based on precedent. A body of rules gradually evolved, and Chancery was too

often bound by judgments based on previous cases.

Just as it had in common law, greed interfered with the administration of justice. Clerks in the Chancery office charged fees for the preparation of documents. Fees were charged for the expedition of suits and officials accepted gifts when cases were successfully concluded.[14] In addition, many of the offices in Chancery were bought and sold (an abuse that also existed in common law).

There were attempts at reform as early as the sixteenth century. But while these solved some problems they frequently created new ones in their stead. Lord Ellesmere, chancellor at the beginning of the seventeenth century, remedied certain Chancery abuses.[15] Near the end of that century Lord Nottingham began systematizing the rules and procedures of Chancery.[16] Later chancellors clarified the uses of specific performance and the injunctions. However, by the nineteenth century equitable justice remained so dependent on precedent that the system lost much of its efficiency and many plaintiffs languished for years "in Chancery" without ever obtaining relief.

Resolution of these problems was finally effected through parliament. The three Judicature Acts of 1871-76 abolished the Chancery and the medieval common law courts and replaced them with a single court, the Supreme Court of Judicature.[17] This new Supreme Court included the High Court of Justice, and the Court of Appeal (divided into civil and criminal, with final appeal to the House of Lords). The High Court, after some amalgamations, ultimately incorporated the Queen's Bench Division, the Chancery Division, and the Family Division

(Probate, Divorce, and Guardianship). The former courts of Exchequer, Common Pleas, and the Admiralty were subsumed within the Queen's Bench Division. The great benefit to the new Supreme Court of Judicature was that it was now vested with both legal and equitable jurisdictions.

Over these eight hundred centuries of English legal history, both the common law and equity jurisdictions have produced massive amounts of archival records, now available in the Public Record Office, Kew Gardens, London. Whether the procedure was by writ or bill, it initiated huge varieties of documented proceedings that form the bases for the joint work of historians and archivists. It is this reality that gives particular purpose and value to this thesis, especially as it shifts in focus to Canada and Manitoba.

The Judicature Acts had not yet been passed when the Atlantic seaboard of what would become Canada was settled. English law entered the Maritimes by means of what Bora Laskin has described as the "half-truth of colonies by settlement."[18] Each colony received English law on the date associated with the institution of the legislature.[19] This date ranged from the middle of the eighteenth century to the early nineteenth century. It coincided with the later period of the Chancery development, the period when the court had become less flexible and less efficient, when equitable justice was dispensed according to precedent. The Maritime provinces received English law at a time when Court of Chancery had already passed its peak of efficiency.

Nova Scotia originated as a "settled" colony and, as such, its legal existence was established by means of specialized letters issued by the British government.[20] Through these letters the power of the Crown in right of the colony was vested in the new governor. The letters conveyed the executive power and authority of the Crown, including prerogative rights, to the governor. In this way "existing British legislation and English judge-made law became, so far as applicable or so far as by reason of local circumstance they are not inapplicable, part of the law" of Nova Scotia.[21]

The commission to Governor Cornwallis in 1749 gave him "power to establish courts 'for the hearing and determining all causes as well Criminal as Civil according to Law and Equity.'"[22] Jurisdiction was somewhat unclear, but apparently one general court was to be formed, which had jurisdiction over common law, civil and criminal, as well as equity.[23] Governor and councillors were to preside over the court. The confusion of jurisdiction led to reform in 1764 when the Court of Chancery separated from the council. From that time the governor acted as chancellor.

Chancery handled "equitable matters" such as "guardianship or lunacy and where the title to real estate had been litigated."[24] It also functioned as a court of appeal and had power to retry actions that had already proceeded through the Supreme Court of Nova Scotia. Like the Supreme Court of Canada prior to 1949, the Nova Scotia Chancery Court represented the last court of appeal before the Privy Council of England.[25]

Chancery Court's administrative business was handled by an appointed Registrar in Chancery. His assistant, the examiner, interrogated witnesses and took depositions. Lawyer Archibald Hinshelwood assumed the first registrar's post in 1764. His duties were to take minutes of court proceedings, to prepare documents, and to manage the office.[26] James Burrow followed Hinshelwood in 1773 and it was under Burrow that document preparation and organization flourished.[27] He developed an efficient method of record keeping that encompassed both non-current and current documents. Burrow brought the literate business of the court to a point of excellence. When he left, record keeping declined. It was not until James Gautier began a twenty-year tenure as Chief Clerk of Chancery Court, in about 1790, that production and care of the records returned to its previous high level.[28]

The administrative positions in the court system required considerable expertise. Often barristers and solicitors filled the positions, because some duties, such as interrogation of witnesses, demanded skills possessed by persons trained in the legal field. The chancellor served as judge of Chancery Court, and the masters as judicial assistants. The registrar's post was equivalent to that of the prothonotary or clerk of the Supreme Court of Nova Scotia. Charles Twining, a solicitor, held during the 1830s the combined posts of Master and Inspector/Accountant-General.[29] All of the positions taken together formed a secretariat which facilitated the day-to-day business of the courts.

The registrar, assisted by the examiner, prepared most of the documents that issued from Court of Chancery. Forms of records reflected the sequence of a court action: "complaint, (i.e., plaintiff's declaration); writs of subpoena and notice of service; defendant's answer; complainant's replication; defendant's rejoinder; pleas; petitions; orders; motions; 'interrogatories' or 'inquisitions'; affidavits and depositions; exceptions; demurrers; references to and reports of Masters in Chancery; bills of costs; and finally the decrees or judgments of the court."[30] Each type of record served to carry out the objective of a particular court procedure.

Concrete steps toward the "archival" treatment of documents began in 1835 when Charles Fairbanks became Master of the Rolls.[31] He initiated the procurement of funds to be used for arranging, filing, and placing in boxes all the records of Courts of Chancery and Vice-Admiralty. John McGregor, a young barrister with experience in handling court materials, was engaged "to arrange the case files and prepare both a catalogue of causes ... and an alphabetical list of names of all the complainants and defendants."[32] McGregor expanded a chronologic-numeric scheme of arrangement that had been originated by Burrow or Gautier. All the cases were arranged chronologically, and numbered in that order. This became the file-classification system and also an efficient method of retrieval.[33]

Chancery Court tried its first case in 1751 and the court operated a little more than one hundred years. As an efficiency measure, in 1855 the legislature

introduced a bill "for abolishing the Court of Chancery, and conferring Equity Jurisdiction on the Supreme Court."[34] By this bill "'all suits remaining in chancery, together with all the rolls, records, and proceedings of the court, ... [were to be] transferred to the supreme court.'" As archivist Barry Cahill points out, it is arguable whether the legislature had the authority to do away with a body that had been instituted by "royal Commission and Instructions" from Westminster. That, however, did not halt passage of the act and termination of the Court of Chancery in Nova Scotia.[35]

The first records of the court were issued in 1751 and they continued to be produced until termination of the court.[36] Documents were bound into record books and manuscript volumes according to type, of which there are several. Cahill refers, for example, to action books, minute books, docket books, writ books, books listing fees and costs, *Chancery Rules of Practice A,* and a commission book naming "Councellors and Sollicitors belonging to the Court of Chancery, and when appointed."[37] The records accumulated in the "Chancery room" at Province House. They weathered a fire there and a move to a new court building where they were stored in the basement, until a final move to the then Public Archives of Nova Scotia in the early 1930s.

The survival of the records was due to the efforts of a number of interested persons. Solicitor-General Charles Fairbanks initiated the first assembly of the materials in 1835.[38] Thirty years later Prothonotary James Nutting arranged for John McGregor to continue his original organizing task after

the closing of the court.[39] In 1899 Judge Charles Townshend wrote "History of the Court of Chancery in Nova Scotia," which was serialized in *Canadian Law Times* and later published as a monograph. The article helped to raise the profile of the terminated court and its records.[40] The survival of the records in such good order was due to the efforts of several meticulous record keepers. James Burrow introduced in 1773 the high standards that were to benefit both the creation and the preservation of documents.[41] James Gautier kept for twenty years "a systematic and thorough record of proceedings."[42] And McGregor, during two separate periods of tenure in the 1830s and 1860s, arranged, classified, and rendered accessible the entire 1751-1855 accumulation of Chancery Court records.[43]

There were differences between the record accumulations of Nova Scotia's Chancery Court and England's Chancery Court. Chancery Court operated in the Maritime colony for one hundred years, as opposed to the several hundred year duration of the court in England. The shorter period of time limited the numbers of documents that were produced. Nova Scotia employed the "dossier" system of record keeping, a system by which "all the papers in one action or matter are kept together in one continuous file from beginning to end."[44] Conversely, England used the "type" system in which "all the documents of a particular type [such as affidavits] are kept together in one continuous group."[45] The advantage of the Nova Scotia method lay in the easy availability of all documents pertaining to a single case. Thus, differences in the

administration and management of the two bodies of records affected their use, and consequently their final disposition.

English law made its entry into Upper Canada with the early influx of settlers from the United States. In the last quarter of the eighteenth century, Loyalists, fleeing the American Revolution, brought with them a commitment to British law and institutions. They transmitted a strong British influence to the frontier areas of what would become Ontario. The Loyalists not only opened new territories north of Lakes Ontario and Erie but they also introduced new legal institutions that would alter irreversibly the previous ways of life in those areas.

British authorities took the position that French civil law and rule by governor and council in use in Quebec would not suit the Loyalists. In 1787 an ordinance was passed that divided the newly settled area into four judicial districts. Each district had its own justice of the peace whose duty it was to conduct Courts of General Quarter Sessions. These courts were instituted in 1789 and served as judicial and administrative bodies until 1841 when district councils were formed. The Quarterly Courts had very broad powers which included criminal jurisdiction and "all aspects of district finances and administration, including the collecting of assessments, taking the census, allocating money for roads and bridges, licensing taverns, building the local courthouse and jail, providing support for paupers and the insane, and paying

official accounts from district funds."[46]

The Constitutional Act of 1791 formally divided old Quebec into Upper and Lower Canada and an elected assembly was instituted for each province. The first sitting of the Upper Canada legislature occurred the following year. At that time the legislature enacted its first statute, under which English civil law was made applicable "'in the several courts of law and equity in this province.'"[47] (That statement apparently referred to the Quarterly Courts that had been operating in the districts of Upper Canada since 1789.) This statute provided for the use of English rules of evidence. English criminal law was formally adopted in 1800, as of September 17, 1792. Thus, because both civil and criminal law were adopted as of 1792, that is the date at which English law is considered to have been received into Ontario. Two years later the Judicature Act established Court of King's Bench but it was vested only with common law jurisdiction; equity was not included.

Upper Canada had no equitable jurisdiction for the first forty-five years of its existence. In 1837 Chancery Court was finally established.[48] It was decided that the governor would serve as chancellor and a judge would exercise his powers under the title of vice-chancellor.[49] This arrangement continued until 1881 when, following England's lead, Ontario abolished the separation of the courts of law and equity. Since that time equitable jurisdiction has resided in the Supreme Court of Ontario.

Upper Canada's Court of Chancery had superior court jurisdiction over a

range of issues involving business, land, and family matters.[50] The issues included fraud, that is, "intentional deception resulting in injury to another" and accident.[51] Chancery jurisdiction embraced trusts, that is, "a right of property held by one person for the benefit of another" and co-partnerships.[52] It oversaw estates, including the estates of "idiots and lunatics." It had responsibility for cases involving land patents, a patent being "the right or title to an area of public land granted to an individual by the government."[53] Chancery also had jurisdiction over such matters as alimony, custody, and guardianships.

Chancery exercised authority in two areas which exemplified the particular character of that court. These areas were "specific performance" and the "staying of waste." The court had the power to require specific performance, that being:

> An equitable remedy available to an aggrieved party when his remedy at law is inadequate, which consists of a requirement that the party guilty of a breach of contract undertake to perform or to complete performance of his obligations under the contract. It is grounded on the equitable maxim that equity regards as done what ought to have been done.[54]

As in England, this power allowed Chancery Court to compel certain actions to be carried out in order that an injured party be satisfied.

Chancery's "staying of waste" authority concerned the restraining of certain actions, approximately the opposite of specific performance. In legal terms "stay" means "to stop, arrest, or forbear."[55] The term "waste" refers to:

> Generally, an act, by one in rightful possession of

> land ... which decreases the value of the land or the owner's interest or the interest of one who has an estate that may become possessory at some future time (such as a remainderman, lessor, mortgagee, reversioner).[56]

Acts that decrease the value of the land include mining of the terrain and destruction of houses, gardens, or trees. "Waste" can also describe:

> inaction by a possessor of land causing unreasonable injury to the holders of other estates in the same land.[57]

The Court of Chancery functioned as a separate court in Upper Canada from 1837 to 1881. There were attempts to secure equitable jurisdiction before 1837 but they were unsuccessful. Prior to that date, therefore, the court lacked a vehicle for dispensing equitable justice. Obviously no Chancery records were generated before 1837 and this vacuum apparently had a negative effect on subsequent record keeping and maintenance.

Chancery case files are extant only from 1869. Two explanations may be postulated for the dearth of files for the first thirty-two years. Beginning in 1857 Chancery Court judges were required to go on circuit to county towns.[58] County courts were not always courts of record and this situation may have jeopardized record keeping during the judges' rounds. Second, in 1868 the responsibility for keeping Chancery Court records was transferred from Registrar of Chancery to Clerk of Records and Writs.[59] Possibly record keeping under the registrar had not been well-executed. It can be concluded that the record keeping environment for Chancery Court materials was less than optimal. The final

result is that the cumulation of case files covers only the period 1869-1881.

Chancery Court records were acquired by Archives of Ontario, largely during the decade from 1969 to 1979.[60] They accompanied court records obtained from courthouses and other buildings in Toronto and rural Ontario. Although all Chancery case documentation had been filed at the central Chancery office in Toronto, many actions had originated in rural jurisdictions. Thus, a search of local Supreme Court offices discovered numbers of Chancery and other court materials, which considerably expanded the Ontario archives' existing comparatively small collection.[61] In 1974 the archives began a subject indexing project of Chancery materials. Indexing was intended to facilitate more extensive use of the documents by researchers.

Some observations may be made concerning the similarities and differences between the Upper Canadian and the Nova Scotian Chancery Court records. Upper Canadian records were generated only for about half a century. During that time the environment of their production appears to have been less than optimal. Apparently there was a lack of dedicated persons to attend to the creation and care of the records. As a result, Chancery Court materials, relatively scanty in number, represent only about a quarter of the period of production. Nova Scotian Chancery Court records present a pleasant contrast. After suffering an indecisive beginning, because of confused court jurisdiction, record keeping flourished. Competent persons took a keen interest in Chancery materials, providing for creation and care of proper records, development and

upgrading of record keeping systems, and preservation of the materials after daily requirements for their use had ceased. In this environment an organized and comprehensive body of records was generated, maintained, and retained, capable of use in the eighteenth century and the twenty-first century.

English law entered Manitoba in a fashion as unique as the history of the province itself. Manitoba's law was associated with neither ceding, settling, nor conquering. Instead, the law made its appearance in conjunction with a business venture.

The venture began with formation of the trading company, "The Governor and Company of Adventurers of England Trading into Hudson's Bay." On May 2, 1670, a royal charter granted the company trading rights to Rupert's Land, the vast drainage basin of Hudson's Bay. Accompanying the trading rights were legislative and judicial powers for the entire territory.[62] The affairs of the company were to be managed by a governor and committee, who were also instructed to make:

> such reasonable laws, constitutions, orders and ordinances as the Company might deem necessary and convenient for the good government ... of colonies ... and enforce such laws, etc., by penalties and punishments, provided that such penalties, etc., were not contrary or repugnant, but were "as near as may be agreeable" to the laws of England.[63]

The company was given power to appoint governors and other officers to

the territories within Rupert's Land. These governors and councils had jurisdiction in civil and criminal matters. The governors and councils were also empowered to execute justice. The grant was unusual in that control of government and justice, not merely trade, was assigned to a commercial enterprise.[64]

According to the terms of the charter, English law became the foundation for the administration of justice in Rupert's Land. The rule of law was not all-encompassing, however. The indigenous groups of the territory continued to manage their affairs through tradition and customary "law." Even the white European population received only rudimentary justice, dispensed by the governor and council, or, if there was no governor, by the company's officer on location. Serious criminal offences were tried in England, a very great inconvenience for everyone concerned. The distance problem was partially solved in 1803 with passage of the Canada Jurisdiction Act.[65] Under the act major cases were to be tried in Lower Canada. Unfortunately, Lower Canada and Rupert's Land jurisdictions remained overlapping and confused.

The company's grant of land to Lord Selkirk in 1811 brought considerable change to Rupert's Land. Ownership of the District of Assiniboia was transferred to Selkirk but government and judicial powers were not. Therefore, in order to establish law in the settlement it was necessary for Selkirk to designate the leader of the settlers, Miles Macdonell, as one of the governors of the company. By this act Macdonell was "clothed with the Company's legislative

and judicial powers."[66] Macdonell, and a council, were to administer justice in Assiniboia. However, under the Canada Jurisdiction Act the governor of Lower Canada had been given power to appoint magistrates to the "Indian Territories." Selkirk took the precaution of having Macdonell appointed as a magistrate. Nevertheless, the conflicting jurisdictions of the magistrates and the governor and council exacerbated tensions in the colony, especially during the period of the greatest rivalry between the Hudson's Bay Company and the North West Company.[67]

Some clarification of authority was obtained in 1815 when the company determined that:

> there be a Governor-in-Chief and Council having paramount authority over the whole of the Company's territories in Hudson's Bay, that such governor, with any two of his Council, might form a Council for the administration of justice and the exercise of the power vested in them by the Charter ....[68]

The company also decided that the Governor and Council of the District of Assiniboia would have the same powers, unless the two governors should be in residence at the same time, in which case the Governor-in-Chief would take precedence. Provision was made for the appointment of a sheriff for Assiniboia.

Much of the tension and strife that had plagued the colony was removed when the two fur trading companies merged. The British government decided not to send judges to the "Indian Territories." The Hudson's Bay Company and the Selkirk estate were to retain responsibility for administering the district of

Assiniboia and "legal and judicial authority were to reside in the Governor and Council of Assiniboia."[69]

Assiniboia reached an important turning point in 1835 when the Selkirk interest in the colony was sold back to Hudson's Bay Company. The company became again the "sole source of legal authority for the area" and this opened the way for formation of a "proper judicial system."[70] The new system was based on division of the area into four judicial districts (later reduced to three) with a magistrate, or justice of the peace, for each district. The magistrates, citizens who were appointed to their offices, conducted quarterly hearings of "Petty Courts." The jurisdiction of these courts covered minor criminal cases and civil claims, and, as a matter of practicality, the courts also managed public works funds.[71]

Serious criminal offences, and appeals from Petty Courts, were heard by General Quarterly Court (sometimes called the "Supreme Court"). This court usually sat when Petty Courts hearings had been completed. The composition of the court evolved over time. Until the 1860s it always included the governor and some or all of the magistrates. During the seventh decade the dominance of the governor and magistrates declined, as officials with specialized training in law came to the fore.

The courts of Assiniboia had always required the services of those possessing literate skills. In the early days procedures were comparatively simple, consisting of "instructions written by Lord Selkirk to his agent in the

Settlement ... or by the Company to the governor."[72] Later, procedures were outlined in minutes of the general court. The summons, or writ, initiated proceedings by stating the "particulars of the plaintiff's claim" and directing the defendant to appear at court on the day indicated and answer to the claim. The process of the Court was served by constables ...."[73] In criminal matters the proceedings themselves generally appeared under the title "The Public Interest versus" the accused or "The Public Welfare versus" the accused. "The Queen versus" or "Regina versus" the accused first appeared during the 1860s.

At a General Court held in London, 1839, the company introduced important changes in the judicial system.[74] One of the changes was creation of the office of Recorder of Rupert's Land. The first recorder was appointed the same year, with instructions to take charge of the legal affairs of the colony. Although Adam Thom was simply to sit as a regular member of the General Quarterly Court, in practice he soon became the most influential individual on the court.[75] This may have been partly due to the fact that Thom was a trained lawyer, the settlement's first. Other changes introduced by the company in 1839 were:

> written records of all the judicial proceedings of the Petty Courts were to be kept; defendants in such Courts were to be summoned in writing; judgements in default of appearance might be given against the defendant; and the magistrates might suspend execution of a judgement for a period not exceeding four months; re-open a case on the defendant paying costs, and issue warrants of distress or imprisonment on the application of the successful party.[76]

The enhanced literate requirements of the courts demanded a lawyer's skills and Thom was up to the task. Moreover, he took an interest in the laws themselves. In 1841 he gathered together diverse existing regulations and consolidated them into one code. These were printed in a "document of fifty-eight sections ... skilfully written."[77] This document was an important improvement in the legal administration of Assiniboia. A second consolidation was completed in 1852. This time the major advance was replacement of the "in force" date of the laws of England. Previously, the laws of Rupert's Land had been those in force at the founding of Hudson's Bay Company in 1670. With the new consolidation the laws were to be those in force at the "date of Her Majesty's Accession," or 1837.[78] Recorder Thom also introduced the use of printed legal forms. In 1850 he "was authorized to draft and have printed blank forms of summonses, subpoenas, and warrants."[79] This represented a significant step in the use of prepared and standardized documents.

Hudson's Bay Company, in all its long history, never received authority to legislate. Nevertheless, the governor and council of Assiniboia had passed and continued to pass rules and regulations that had the force of laws. Many of the regulations controlled such matters as fishing, hay cutting, and fire prevention. Others, such as Law Five, were much broader in purpose. Law Five enacted that "Unless special regulations provide to the contrary, every wrong has its remedy under the general law of the country."[80] This was reminiscent of one of

the equity maxims and it may have been drawn from knowledge, perhaps Thom's, of English law and practice.

A succession of capable recorders served the Red River Settlement until it entered a new political era at the end of the 1860s. At least two of these recorders dispensed justice according to what might be termed equitable principles. Of Dr. John Bunn it was said that "[h]is rare blend of energy, intelligence and empathy more than compensated for the absence of a formal legal education. In fact, there is evidence to suggest that his lay common sense sometimes improved upon the law."[81] Among other things Bunn insisted that the testimony of Indians be accepted even though they were not baptized and therefore could not give sworn testimony. Recorder John Black made his goal "humane adjudication rather than observance of the strict letter of the law."[82] In a letter to *The Nor'-Wester* he declared that "frontier courts should avoid 'subtle refinements and ingenious technicalities,' and strive instead to achieve 'substantial justice.'"[83] Black was the last recorder of the Red River Settlement era, a period when administration of the law in the colony was still in its developmental and flexible stage.

It was during Black's tenure that the role of recorder in the General Quarterly Court became predominant and the roles of the governor and magistrates eventually disappeared.[84] By the end of the 1860s the recorder's position was complemented by that of two clerks who assisted with the general functioning of the court. A sheriff, whose office had existed from the earliest

period of the settlement, executed the court's orders.

The judicial system, developmental and somewhat informal, maintained a remarkable degree of stability through the uncertain years of 1868-1870. In 1868, passage of the Rupert's Land Act provided for transfer of Hudson's Bay Company lands to the crown.[85] This presaged a transitionary period during which the Métis people, under the leadership of Louis Riel, attempted to secure their land holdings. In other circumstances their quest might have erupted into a bloody revolt. As it turned out, the rule of law continued throughout, albeit in changing and uncertain form.

At least two factors were important in continuance of the law. First, the Rupert's Land Act had provided that "existing legal institutions" would extend until new ones were constituted.[86] The Council of Assiniboia held its last meeting October 30, 1869, but the General Quarterly Court held hearings to the end of the year, even after formation of Riel's provisional government in the autumn. Second, Riel's apparent objective of creating a legitimately governed province meant that negotiation and documentation were the preferred vehicles for obtaining Manitoba's entry into the union. Although Riel was frustrated in gaining entry on the terms that he desired, his striving for legitimate means meant that the fledgeling province was spared the violence that might have been.

A revised justice system began to take shape in January of 1870.[87] Its structure was much like that of the previous system, even to the reappointment

of most former officials. This system operated under Riel's Provisional Government. The old Petty Courts held hearings until the Provisional Government's new Petty Courts replaced them. A District Court sat in July. But in August, at the threat of Wolseley's advancing troops, Riel fled Fort Garry. Early in September of 1870 Manitoba's first Lieutenant-Governor, Adams Archibald, arrived to initiate the functions of the new province.

Notes

1. Quebec private law is based on a civil law system. "The private law is defined, essentially, as those areas of law in which the private interest is primarily involved" while "public law is defined, essentially, as those areas of the law in which the public interest is primarily involved," such as constitutional law, administrative law, criminal law, and taxation law. Gerald L. Gall, *The Canadian Legal System*, 3rd ed. (Toronto: Carswell, 1990), 24-25, 49-51.

2. L.B.Curzon, *Equity,* 3rd ed. (London: Macdonald and Evans Limited, 1975),4-6.

3. J.H. Baker, *An Introduction To English Legal History* (London: Butterworths, 1971), 19, and chapters 4, 5.

4. The term "common law" has more than one meaning. It can refer to the body of laws developed by itinerant medieval justices. It may mean law based on judicial decisions rather than Roman law. It can speak of judge-made law, as opposed to statute law. It may also designate the English Court of Common Law. S.M. Waddams, *Introduction to the Study of Law,* 5th ed. (Scarborough: Carswell Thomson Professional Publishing, 1971), 71.

5. Baker, 78-82.

6. G.W. Keeton, *An Introduction to Equity,* 6th ed. (London: Sir Isaac Pitman and Sons Limited, 1966), 12-16. Plaintiff is defined as "[t]he one who initially brings the suit; a person who brings an action. Also, a defendant who brings a counterclaim will be considered a plaintiff as relating to his counterclaim." John A. Yogis, *Canadian Law Dictionary,* 3rd ed. (New York: Barron's Educational Series, Inc.), s.v. "plaintiff." Writ is defined as "a mandatory precept issued by the authority, and in the name of the sovereign or the state for the purpose of compelling a person to do something therein mentioned. Issued by the court or other competent tribunal, it is directed to the sheriff or other officer authorized to execute the same." Yogis, s.v. "writ."

7. Baker, 103-105.

8. Frederic W. Maitland, "Equity, also, the forms of action at common law: two courses of lectures," edited (Cambridge, England: University Press, 1909): quoted by Keeton, 21.

9. Henry Maine, *Ancient Law,* 9th ed. (London: John Murray, 1909), 34.

10. Curzon, 1.

11. Ibid., 15.

12. Keeton, 237-41, 256.

13. Eric C.H. Owen, *Equity Notebook* (London: Butterworths, 1970), 2.

14. Keeton, 19-20.

15. Curzon, 9-10.

16. Ibid.

17. Baker, 48.

18. Bora Laskin, *The British Tradition in Canadian Law* (London: Stevens and Sons, 1969), 2.

19. Gall, 52. Courts with equitable jurisdiction existed in Nova Scotia, Upper Canada, Lower Canada, Newfoundland, British Columbia, and Manitoba. Nova Scotia and Upper Canada are treated here as they provide good examples of what would later develop in Manitoba. See Christopher English, "Newfoundland's Early Laws and Legal Institutions: from Fishing Admirals to the Supreme Court of Judicature in 1791-1792," *Manitoba Law Journal* 23 (1996): 55; Murray Greenwood, "Lower Canada (Quebec): Transformation of Civil Law, from Higher Morality to Autonomous Will, 1774-1866," *Manitoba Law Journal* 23 (1996): 132; Hamar Foster, "British Columbia: Legal Institutions in the Far West, from Contact to 1871," *Manitoba Law Journal* 23 (1996): 293.

20. James Townshend, "History of the Court of Chancery in Nova Scotia," *Canadian Law Times* 20 (1900): 14. Nova Scotia at the time included what later was separated as New Brunswick. Laskin, 5-6.

21. Laskin, 3.

22. Barry Cahill, "Bleak House Revisited: The Records and Papers of the Court of Chancery in Nova Scotia, 1751-1855," *Archivaria* 29 (1989-90): 150. The date of issue for the letters of commission, 1749, differs from the formal date for reception of English law in Nova Scotia, 1758. The latter date coincides with the first sitting of the legislature. Laskin, 6.

23. Townshend,15.

24. Cahill, 156.

25. Ibid., 151.

26. Ibid., 152.

27. Townshend, 18, 37.

28. Ibid., 153.

29. Cahill, 157.

30. Ibid., 152.

31. Townshend, 105.

32. Cahill, 154.

33. Ibid., 155.

34. Townshend, 111.

35. Cahill, 157.

36. Ibid., 150, 158.

37. Ibid., 161-163.

38. Ibid., 154.

39. Ibid., 158.

40. Ibid., 158.

41. Townshend, 37-38.

42. Cahill, 153.

43. Ibid., 158.

44. Great Britain. Committee on Legal Records. *Report of the Committee on Legal Records* (London: Her Majesty's Stationery Office, 1966), 3.

45. Ibid., 3.

46. C.J. Shepard, "Court Records As Archival Records," *Archivaria* 18 (1984): 127.

47. Laskin, 5, 17-19.

48. Shepard, 128.

49. Laskin, 19.

50. *Consolidated Statutes for Upper Canada* 1859, c.12, quoted in Shepard, 128.

51. John Yogis, *Canadian Law Dictionary,* 3rd ed. (New York: Barron's Educational Series, Inc., 1983), s.v. "fraud."

52. Yogis, s.v. "trust."

53. Henry Campbell Black, *Black's Law Dictionary,* 6th ed. (St. Paul, Minn: West Publishing Co., 1990), s.v. "patent."

54. Yogis, s.v. "specific performance."

55. Black, s.v. "stay."

56. Yogis, s.v. "waste." Remainderman is defined as "One who has an interest in land 'in futuro;' one who has an interest in an estate that becomes possessory at some point in the future after the termination, for whatever reason, of a present possessory interest." Yogis, s.v."remainderman." Reversion is defined as "'[t]he returning of the land to the grantor or his heirs after the grant is determined .... [w]here the residue of the estate always continues in him who made the particular estate ....'" Yogis, s.v. "reversion."

57. Black, s.v. "waste."

58. Shepard, 129.

59. Upper Canada Court of Chancery, *Consolidated Orders of the Court of Chancery With Tariff of Fees and Charges,* 1868 (P1387 A876), Archive of Manitoba Legal-Judicial History, PAM.

60. Shepard, 126.

61. Ibid., 129.

62. Laskin, 7.

63. Frederick Read, "Early History of the Manitoba Courts," *Manitoba Bar News* 10, no.1 (September 1937): 451.

64. Dale Gibson and Lee Gibson, *Substantial Justice: Law and Lawyers in Manitoba, 1670-1970* (Winnipeg: Peguis Publishers, 1972), 2.

65. Ibid., 3.

66. Ibid., 6.

67. Ibid., 9-14.

68. Read, no.1, 452.

69. Gibson and Gibson, 18.

70. Ibid., 23-25.

71. Ibid., 50.

72. Frederick Read, "Early History of the Manitoba Courts," *Manitoba Bar News* 10, no.2 (October 1937): 468.

73. Ibid., 468.

74. Read, no.1, 454.

75. Gibson and Gibson, p.28.

76. Read, no.1, 455.

77. Gibson and Gibson, 30.

78. Read, no.2, 467.

79. Gibson and Gibson, 42.

80. "Laws of Assiniboia," *Consolidated Statutes of Manitoba* (1880), quoted in Read, no.2, 470.

81. Gibson and Gibson, 48.

82. Ibid., 55.

83. Ibid.

84. Ibid., 55.

85. United Kingdom. Rupert's Land Act. *Statutes,* 1868-69, 31-32 Victoria, c.105.

86. Gibson and Gibson, 59.

87. Ibid., 60-62.

Chapter 2

Manitoba Court of Queen's Bench in Equity, 1872-1895: Organization, Function, and Personnel

Two actions facilitated continuation of the rule of law in Manitoba. The Rupert's Land Act of 1868 specified that "existing legal institutions" would be in operation until new ones were initiated. Secondly, Riel's quest for a legitimately constituted government necessitated a properly functioning judicial system. Several steps were taken to institute such a system. In January of 1870, the provisional government appointed a justice administrator for the settlement.[1] A chief justice was appointed and arrangements were made for the former judges, constables, and sheriff to continue under the new regime. Petty Courts were increased in number from three to five. Only a few of these plans reached fruition. Petty Courts held hearings and the District Court (General Quarterly Court) sat at least once. But when Riel fled Red River in August, these operations ceased. Civil government was assigned to Donald A. Smith until the new lieutenant-governor should arrive.

The times were uncertain. The province had only just come into being; Canada itself was only three years old. The terms of Manitoba's entrance into Confederation had left her without control of her own lands and resources. This was to have serious, if not tragic, long-term consequences. In the short-term, the question of land alienation and settlement would occupy much of the

attention of the province's first acting Lieutenant-Governor, Adams G. Archibald.

Archibald was faced with a number of problems associated with lands disposition. The first two of the numbered Indian treaties required organization and this meant the appointment of Indian agents and commissioners.[2] Such appointments were slow since assignments originated in Ottawa. Because immigration was imminent, arable lands, and the reserves, required immediate survey.[3] It took some time before the survey system was chosen and surveyors were engaged to carry out the task.[4] The delays did nothing to allay the fears of the Métis who were in a state of alarm over infringements on their territories.[5] Some Ontarians had already made incursions at Pembina and at Rivière-aux-Îlets-de-Bois (Boyne River) before Archibald arrived at Red River.[6] The Lieutenant-Governor did not have the authority to settle land claims. Sir John A. Macdonald, with the agenda of nationhood, including settlement, apparently on his mind, did not appear to be in a hurry to respond to the requests of the indigenous population of the province.[7]

Other issues demanded the Lieutenant-Governor's attention. Transportation and communication urgently required improvement in order that the needs of incoming settlers be met.[8] Travellers and the mails were obliged to follow the difficult Dawson or the long American route. Obtaining goods of any kind from the East presented problems. For example, the first Great Seal of Manitoba, sent from Ottawa, was lost en route and had to be re-struck and forwarded again.[9] Funds for the operation of the province were delayed.[10] The

lack of a police force seriously hampered maintenance of law and order.[11] These and other challenges complicated Archibald's primary task which was to establish a government for the new province.

Letters patent issued at Ottawa and recorded July 28 and 29, 1870, appointed Archibald as Lieutenant-Governor of Manitoba and the North-West Territories and authorized him to organize "part of the said Territories into a Province, and for the establishment of a Government ...."[12] He arrived at the nascent settlement of Winnipeg and proclaimed the new government September 6, 1870.[13] Archibald formed a small executive council by appointing a provincial treasurer and a provincial secretary. He then took preliminary steps towards holding an election. The first essential, a census of the population, was completed in December. Archibald oversaw drawing of the electoral division boundaries and then called the province's first election. Twenty-four members were returned, equally divided between French and English.[14] The first parliament opened March 15 and remained in session until May 3.

Organization of elections continued to be part of the duties of lieutenant-governors. A.G. Archibald and his successor, Alexander Morris, in addition to their neutral participation in implementing elections, played prominent roles as administrators of provincial affairs. Later lieutenant-governors had less responsibility as administrators, particularly when premiers began to undertake more of the duties attendant upon running the province. Seven lieutenant-governors represented the Queen from 1870 to 1895: A.G. Archibald, F.G.

Johnson (he did not actually serve), Alexander Morris, J.E. Cauchon, J.C. Aikins, J. Schultz, and J.C. Patterson.

Five premiers served during the period, including Marc Girard, who held office for a short time in 1874. R.A. Davis (1875-78) followed Girard. During Davis' tenure the upper chamber of the legislature went out of existence (1876). John Norquay, the province's only Métis premier, took the helm of government in 1878 and held the position nearly ten years. After D.H. Harrison's brief stint, Thomas Greenway began his decade-long tenure as Manitoba's premier (1888).

Each of the premiers named an attorney-general to act as the chief law officer of the Crown. Henry J. Clarke served four years as the first attorney-general. Joseph Dubuc was named by Marc Girard as the crown's prosecutor (1874). Joseph Royal became attorney-general under R.A. Davis (1876-78), though Davis abolished the office for a period of time in order to save money.[15] It was Royal who would dismiss the province's first prothonotary, Daniel Carey.[16] D.M. Walker, chosen by John Norquay (1878), served until his judicial appointment to the Western Judicial District at Brandon (1882).[17] A.M. Sutherland was followed by J.A. Miller (1883), C.E. Hamilton (1884), L.W. Coutlee (1886), Joseph Martin (1888), and Clifford Sifton (1891). Under the collective aegis of the attorneys-general, court and judicial records were created, retained, and finally became known as the "Records of the Attorney-General."

These records were generated as a result of the functioning of the province's judicial system. That system was constituted by the first parliament,

whose election Lieutenant-Governor Archibald had overseen. The "Act to establish a Supreme Court in the Province of Manitoba, and for other purposes" was assented to May 3, 1871.

> There shall be constituted a Court of Justice for the Province of Manitoba, to be styled "The Supreme Court," which shall have jurisdiction over all matters of Law and Equity, all matters of wills and intestacy, and shall possess such powers and authorities in relation to matters of Local or Provincial jurisdiction, as in England are distributed among the Superior Courts of Law and Equity, and of Probate.
>
> The Supreme Court shall be held by a Judge, to be styled "The Chief Justice," who shall hold office during good behaviour. In case of the death, illness, absence, or inability to act of the Chief Justice, the Court may be held by any person who shall have been designated for that purpose by the Governor-General in the Commission to the Chief Justice, or in a separate commission.
>
> The Clerk of the Court shall be styled the Prothonotary, and shall be appointed by the Lieutenant-Governor in Council.[18]

The act specified that the court meet four times a year. Should that number be inadequate "The Lieutenant-Governor [as representative of the Queen through the Governor-General] may by Order-in-Council, from time to time direct an extra session of the Supreme Court ...."[19] The province was divided into four judicial counties (corresponding to the four main electoral divisions) with a deputy sheriff for each county and a sheriff for the whole.

The act also made provisions for the manner in which the court was to be conducted:

> The Chief Justice shall make rules to regulate the practice of the Court, and the fees of the Prothonotary, Attorneys, Sheriff, and other officers thereof, and shall prescribe the forms of proceeding to be used therein; but until such rules are made, the practice and proceedings shall be regulated by the rules in force in England at the time of the transfer of this Province to Canada, in so far as such rules can be applied to the circumstances of the Province.[20]

The Supreme Court, as established by the act of 1871, never convened. The act had stipulated, however, that General Quarterly Court should continue, with full powers, until a chief justice was appointed. But the federal government delayed appointing a judge for more than a year. Francis G. Johnson, former Recorder of Rupert's Land, who had been persuaded to return to Manitoba in October 1870, carried out the functions of the General Quarterly Court until May 1872.[21] Among other things, Johnson drafted the regulations for the province's first election.

The Legislature amended the Supreme Court Act in 1872 to rename the court as "Court of Queen's Bench." The province's first Chief Justice, Alexander Morris, was appointed July 2, 1872. He served in that capacity only until December when he took the position of Lieutenant-Governor.[22] Puisne Justices J.C. McKeagney and Louis Bétournay were appointed on October 7 and 31 respectively, and sworn during December.[23] The first sitting of Court of Queen's Bench, Manitoba, took place October 8, 1872, with Chief Justice Morris presiding, since McKeagney and Bétournay had not yet arrived to take up their positions.

The Supreme Court Act created a two-level judicial system, each level having its particular jurisdiction. Superior court level comprised Law, Equity, and Probate courts, each, in turn, having its own jurisdiction. Inferior court level consisted of the Petty Sessions. The latter took the place of the earlier Petty Courts which had had jurisdiction over "petty offences which do not involve any other than a pecuniary fine."[24] In 1872 Petty Sessions were abolished and County Courts established in their stead. These would serve the minor court needs of the province for another century.

The act of 1874 gave clear definition to the jurisdiction of the superior courts.[25] Court of Queen's Bench was mandated with civil and criminal jurisdiction. Practice was to be the same as that of England as of July 15, 1870, unless it was changed by an act of the legislature. The court was "to determine matters relative to property and civil rights," but decisions were not to affect civil rights acquired under the laws of Assiniboia. Significantly, the court's recording authority was stated contiguously with its civil and criminal authorities:[26]

> The said Court of Queen's Bench, being a Court of Record and possessing original and appellate jurisdiction, shall possess and exercise all such powers and authorities as by the laws of England are incident to a Superior Court of Records of Civil and Criminal jurisdiction, in all matters, Civil and Criminal, whatsoever, and shall have, use, enjoy and exercise all the rights, incidents and privileges as fully to all intents and purposes as the same were on the day and in the year aforesaid possessed, used, exercised

> and enjoyed, by any of Her Majesty's Superior Courts of Common Law, at Westminster or by the Court of Chancery, at Lincoln's Inn, in England.[27]

Law, Equity, and Probate maintained separate jurisdictions. In certain respects, however, the three were interrelated and their functions sometimes overlapped. Law had jurisdiction over civil and criminal matters, but in some instances civil cases could be referred to Equity. Probate or Surrogate Court had authority in matters related to wills. This authority was defined in an act of 1880:

> All jurisdiction and authority, voluntary and contentious, in relation to matters and causes testamentary, and in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons having estate or effects in Manitoba ... this provision shall not be construed as depriving the court of Queen's Bench, equity side, of jurisdiction in such matters.[28]

The act made it clear that probate jurisdiction was also vested in the equity side of Queen's Bench. The act defined and also devolved surrogate or probate jurisdiction to judicial district level. Through the act separate surrogate courts were established, to be presided over by judges of the judicial districts.[29]

The interrelationship of Law, Equity, and Probate was accentuated by the fact that, in Manitoba, the court was composed of a very small number of judges. The chief justice and two puisne judges served the province's Queen's Bench and County Court needs until 1882.[30] That year full-time County Court judges were appointed. Even so, there was still an existing backlog of cases and this mushroomed dramatically during 1882-83.[31] (Writs were issued for 735 cases in

1881, 2874 in 1882, and 5800 in 1883.) Finally, the Dominion Government recognized the problem and in 1884 a fourth justice was appointed to the Court of Queen's Bench.

The first years of the court were, in some respects, developmental. During the early period one or more justices constituted a quorum and the court could continue with proceedings.[32] If the court sat as a court of error and appeal, however, two or more judges were required for a quorum.[33] In 1876 an act of the legislature specified that Queen's Bench meet four terms per year and that the justices sit "in banc(o)," that is, two or more judges on the bench, during these terms. For matters that arose between terms it was provided that any justice could "[sit] alone in chambers, during term time, or during the interval between the said terms" and could "hear, determine, and finally dispose of any issues that may be thereupon joined ...."[34]

Court of Queen's Bench received authority to act as an appellate court through the Supreme Court Act (1871).[35] The court was mandated with "original (with a single judge) and appellate (with the court sitting en banc) jurisdiction."[36] Higher appeals had to be taken to the Judicial Committee of the British Privy Council.[37] However, in 1875, creation of the Supreme Court of Canada provided for such appeals to be made to that court. In Manitoba a separate Court of Appeal was formed in 1906 and the appeal jurisdiction of Queen's Bench transferred at that time.[38] At the inferior court level appeals were permitted from County Court to Queen's Bench in cases involving more than $40.00.

It was as a part of the superior court that Equity had its constitution. The act of 1871 created the Supreme Court of Manitoba with "jurisdiction over all matters of Law and Equity, all matters of wills and intestacy ...."[39] For reasons of economy, Equity never became a separate court, as it had in England.[40] It stood alongside Common Law, each as a "side" of Queen's Bench. Common Law handled "legal" matters and Equity handled "equitable" matters. The act of 1880 declared that "Queen's Bench shall have the like jurisdiction and powers ... possessed and exercised by the court of chancery in England."[41] These powers were broad and extended to trusts, fraud, cases where common law did not provide a remedy, where actions needed to be prevented, or where actions needed to be compelled. The act specified the jurisdiction as follows:

> 1. In case of fraud and accident;
>
> 2. In all matters relating to trusts, executors and administrators, co-partnerships and accounts, mortgages, awards dower, infants, idiots, lunatics, and their estates;
>
> 3.Staying of waste;
>
> 4. Compelling the specific performance of agreements and contracts;
>
> 5. Compelling the discovery of concealed papers or evidence, or such as may be wrongfully withheld from the party claiming the benefit of the same;
>
> 6. The preventing of the multiplicity of actions or suits;
>
> 7. The staying of proceedings at law prosecuted against equity and good faith;

8. The decreeing of the issue of letters patent from the crown to rightful claimants;

9. The decreeing of the repeal and of the making void of letters patent issued erroneously or by mistake, or improvidently or through fraud;

10. The administration of justice in all cases in which there exists no adequate remedy at law;

11. The like equitable jurisdiction in matters of revenue relating to the Province of Manitoba, as the court of Exchequer in England possessed;

12. The pleading in bar of equitable defence set up and decided at law;

13. The granting of injunctions to stay waste in a proper case, notwithstanding that the party in possession claims by an adverse legal title;

14. The awarding of damages, if the court shall see fit so to do, in all cases in which the court has jurisdiction against a breach of any covenant, contract or agreement, or against the commission of a wrongful act, or for the specific performance of any covenant, contract, or agreement, in addition to, or in substitution for, injunction or specific performance; and such damages may be ascertained by the court or in such a manner as the court shall direct, or the court may grant such other relief as it may deem just;

15. The trying of the validity of wills and testaments, whether probate had been granted or not, and the pronouncing of them void for fraud or undue influence or otherwise, in the same manner and to the same extent as the court has jurisdiction to try the validity of deeds and other instruments;

16. The decreeing of alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto; or to any wife whose husband lives separate from her, by the

> law of England, to a decree for restitution of conjugal rights; and alimony, when decreed, shall continue until the further order of the court;
>
> 17. The granting of relief against forfeiture for breach of covenant to insure, where no loss has been sustained, and where breach occurred through accident or mistake or otherwise, without fraud or gross negligence.

A distinctive difference between the Equity and Law sides of Queen's Bench lay in the remedies at their disposal. Law could provide only "post facto" damages, that is, compensation after the injury was committed. Equity, on the other hand, had persuasive instruments at its disposal. Injunctions were employed to direct action. One type of injunction "commanded a party to refrain from doing a particular act or thing."[42] A second type ordered a party to carry out a particular action. A decree of specific performance commanded that "the party guilty of a breach of contract undertake to perform or to complete performance of his obligation under the contract."[43]

The first Court of Queen's Bench opened October 8, 1872 with Chief Justice Alexander Morris presiding. He had been appointed in July, had travelled to Winnipeg, and was sworn on August 14. Because piusne judges McKeagney and Bétournay were not sworn until December, Morris presided over the first sitting alone. He formally closed the court on October 14, after announcing the new Queen's Bench Rules.[44] Morris received his commission as Lieutenant-Governor of Manitoba and North-West Territories in December. Consequently, the second sitting of Queen's Bench, in January 1873, was

convened by Justices McKeagney and Bétournay.

Chief Justice Morris announced just six Queen's Bench rules, all having to do with common law matters.[45] In content, the rules followed those in use in Ontario, which, in turn, were patterned after those of England. Notably, three of the regulations pertained to the records of the court, their proper creation and submission to the prothonotary in charge. These rules for procedure and practice were the first to be issued by the province's Court of Queen's Bench.

Morris' five years as Lieutenant-Governor were dominated, as Archibald's had been, by the issues of land disposition and settlement.[46] The survey, the prospect of incoming Mennonite, Icelandic, and Ontario settlers, requirements for reservations, and the deteriorating situation regarding Métis lands all demanded his attention. He appeared sympathetic to the plight of Manitoba's indigenous people.[47] It was through his efforts that Treaties 3, 4, 5, and 6 were successfully negotiated, and Treaties 1 and 2 revised.[48] Morris strongly urged that administration of Indian affairs be by "Boards embracing the Governors of Manitoba and the North-West Territories" but his advice was ignored.[49]

One of the first communications that Morris received concerned Métis lands.[50] It was one of many such letters that pointed to the anxiety of the mixed-blood people, and to their frustration with the changing landholding system in the new province. Morris declared himself to be "between ... fanatic English Orangemen and excited half-breeds and French; my sympathies have been with the native mixed population."[51] Though he had been an effective negotiator in

the case of the numbered treaties he was unable to achieve the same success with Métis lands. Part of the difficulty appears to have been the delaying tactics of John A. Macdonald and the federal government.[52] In a letter to Minister of Justice, David Mills, Morris criticized the Dominion Government's mishandling of the land claims issue. However, it has also been argued that the Lieutenant-Governor stood to gain from the uncertainty surrounding Métis titles, and that he did, in fact, acquire a considerable amount of land in and around Winnipeg.[53] There was much portent in Morris' 1879 statement "... my sympathies are with the North-West; it is a shame half-breeds have been ignored; it will result in trouble."[54] That trouble flared in 1885 in the North-West. The long-term consequences of the botched Métis lands issue were to be reflected for many years through proceedings of Manitoba Queen's Bench in Equity.

Morris resigned from the chief justiceship at the end of 1872 in order to take the post of Lieutenant-Governor. The position remained vacant until 1874 when E.B. Wood was appointed. Wood arrived in June to begin an eight-year tenure marked by his ability, energy, and hard work, as well as by his intemperate and extravagant habits.[55] In his charge to the jury in the Ambrose Lepine case Wood spoke for five hours and "marshalled legal fact after fact, in one of the ablest charges, if not the ablest, ever given to a jury in Canada, expounded the law clearly, powerfully, and exhaustively ...."[56] On the other hand, Wood's drinking and lack of thrift were troublesome. In reference to a debt that he owed, Prime Minister Alexander Mackenzie wrote to Morris, "I fear

his course has already interfered with the discharge of his duties."[57]

It was during Wood's tenure that *The Orders of the Court of Queen's Bench in Equity, With Forms* was published.[58] Equity side had been using rules, known as "Taylor's Chancery Orders," which were those of Ontario's Chancery Court.[59] The new publication, written by Chief Justice Wood and Puisne Justices Joseph Dubuc and James S. Miller, probably received impetus from the act of 1881 respecting Queen's Bench in Equity. The act stated, "The Court of Queen's Bench may make and publish general orders ...."[60] In response to that directive the new book of orders treated three main subjects: officers of the court were named and their responsibilities identified; former orders were listed for cancellation; and standard forms were designated for Equity use. The forms corresponded to detailed functions of the court and included bills, affidavits, praecipes, decrees and orders. Continued maintenance of court documents received special emphasis under the order:

> The care and custody of all documents to be deposited for safe keeping, or produced under any order of the court.[61]

Wood died of a stroke in October 1882, while hearing a case in court. He had been the first chief justice to hold the position for an appreciable length of time. Of him it was said, "... it will be well to remember that it was his lot to do the chopping, slashing and clearing, so to speak, of a new country. And if the work was not ornamental or artistic, it was at least useful."[62]

Wood's successor, Lewis Wallbridge, was named Chief Justice in

December of the same year. One of the factors in his appointment was his "extensive knowledge of legal matters relating to land."[63] That knowledge would be particularly valuable during the following years of expansion and settlement in the province. Wallbridge's reputation as a "sound lawyer, whose training at the bar had been wide and varied" gained him the respect of Manitoba's legal profession.[64] He believed firmly in the common law and "had an aversion to legislation which puts obstacles in the way of access to the courts."[65] That sentiment had parallels in the ancient objections to writ restrictions that prevented the English from having their fair avenue to the courts.

A new system of land titles was introduced during Wallbridge's term of office. Prior to 1885 land deeds were exchanged between parties, who were supposed to register the deeds at a public office. That method proved to be prone to error and neglect. Under the improved "Torrens" system titles "became a matter of public record" and were guaranteed.[66] The new system had an immediate attraction. In his annual report Attorney-General C.E. Hamilton remarked on the "... success which has attended the introduction of the mode of registration of title, [the] 'Torren's System,'" and on the "... marked increase in the number of transactions ...."[67]

Another important reform of the era affected the Court of Queen's Bench. There had been difficulties associated with the dual-sidedness of the court. Lawyer John S. Ewart, founder of *Manitoba Law Reports,* gave voice to the problem in 1884:

> The curious spectacle is here presented of the Court of Queen's Bench by its injunction restraining proceedings in the Court of Queen's Bench - the Chief Justice on Monday awarding an injunction, practically, to restrain the Chief Justice from doing injustice on Tuesday. Sometimes too, where the pleadings are in common law style, the court finds itself unable to give full effect to the equitable doctrines applicable to the case until the appearance of the pleadings has been altered.[68]

Two years after Ewart's pithy criticism the Legislature passed the act that made it possible for equitable remedies to be given in common law actions. The act specified:

> For the purpose of carrying into effect the objects of this Act, and for causing complete and final justice to be done in all matters in question in any action on the common law side of the court, the court or a judge thereof, according to the circumstances of the case, may at the trial or at any other stage of the action or other proceeding, pronounce such judgment, or make such order or decree as the equitable rights of the parties respectively require, and may make such rule or order as to adding third parties to proceedings, striking out parties, or treating parties named plaintiffs as defendants, or parties named defendants as plaintiffs, and as to costs, and may make such inquiries to be made and accounts to be taken as seem reasonable and just; and may fully dispose of the rights and matters in question as a court of equity could.[69]

No objection was to be allowed that the plaintiff should first have sued in a court of law.

> Where a suit is instituted or where a petition is filed in the court for the purpose of establishing the title of the plaintiff or petitioner to any real property, no objection to such suit of proceeding shall be allowed upon the ground that the plaintiff or petitioner should first have sued at law, or would

> have an adequate and complete remedy at law by action of ejectment or otherwise ....[70]

In addition Equity side was given common law jurisdiction:

> The said court in any suit or other proceeding instituted on the equity side thereof shall have jurisdiction in all matters which would be cognizable in a court of law and may grant therein to any person all such relief and remedies as he may be entitled to; but in case at any stage of the cause in equity, it appears to the court or a judge thereof that the suit or proceeding may, for any reason, be more conveniently, expeditiously or inexpensively carried out or dealt with on the common law side of the court, the court, or a judge thereof, may order the suit or proceeding to be transferred to the common law side of the said court as the Court or Judge thinks proper ....[71]

When a case was transferred from one side of the court to the other side the administrative officer was directed to:

> annex together all the pleadings and papers filed, and transmit the same together with the order of transference or a copy thereof to such officer ... as the order directs.[72]

Through these changes each side of Queen's Bench acquired jurisdiction originally belonging only to the other side. Each side now had improved flexibility and each could dispense justice more equitably.

A year after the jurisdictional reforms came into effect Chief Justice Wallbridge died. T.W. Taylor, who had been serving as puisne justice since 1883, was named to take his place. Taylor was sworn on October 22, 1887, and was to hold the chief justiceship until his retirement in 1899.[73] He had been a master in chancery in Ontario, and was known for his experience in equity

matters. As master, Taylor had acquired chancery manuals dating from the inception of Ontario's Equity Court.[74] He had also written a commentary on equity jurisprudence and, in 1865, the manual *General Orders of the Court of Chancery, With Notes and Forms*.[75] The latter was already in use as a guide to practice and procedure for Manitoba's Queen's Bench in Equity and it may have formed the basis for Wood, Dubuc, and Miller's treatise. Taylor's expertise, as illustrated by his writings, was doubtless an important factor in his appointment as chief justice.

Neither Taylor, Wallbridge, nor Wood could have carried out the duties of the judiciary without the assistance of puisne judges. Indeed, during peak years such as the early 1880s, even four justices were hard-pressed to dispose of the heavy burden of cases. Judges McKeagney and Bétournay, appointed in 1872, both served five years.[76] While they were on the bench Queen's Bench judges were responsible not only for the cases of that court but for those of the county courts as well. That arrangement continued until 1882 when full-time county court judges were appointed.

The deaths of McKeagney and Bétournay in 1879 left a double vacancy on the bench. Joseph Dubuc, one of the first lawyers to practise in the province, was named to fill one of the positions.[77] Like Bétournay, Dubuc had first been called to the Quebec bar. During his long and distinguished career Dubuc served in a number of capacities, including that of chief justice, beginning in 1903.

James A. Miller, appointed puisne judge in 1880, remained only two years before resigning. He was later to occupy the position of attorney-general. Robert Smith, named in 1884, died less than a year later. But T.W. Taylor, of the Ontario bar, was to grace the Manitoba bench from 1883 to 1899, first as puisne judge, then as chief justice. As mentioned above, his knowledge of equity was of considerable value to the judiciary at the end of the nineteenth century.

A.C. Killam, originally called to the Ontario bar, practised law in Manitoba for six years before being appointed puisne judge in 1885. His elevation to the bench met with approval for he was known to have "professional excellence and personal integrity."[78] Killam was named Chief Justice in 1899 and held that position just four years before being called to the Supreme Court of Canada.

One of the first lawyers to be admitted to the Manitoba bar in 1871 was J.F. Bain.[79] Ontario-trained, like many others, he went into partnership practice the year after arriving in Winnipeg. He was well-respected in the profession; Morris referred to him as "the best lawyer of them all." Bain received his appointment as puisne justice in 1887 and presided over his first case, a murder trial, soon after. It was reported that he "made it evident that he was judge and thoroughly alive to the dignity as well as the responsibility of the position."[80] Bain died in 1905. Tributes to him noted that he had been "a judge for more than the average period of service on this bench" and "an upright judge, an able jurist, and a good citizen."[81]

The staff of Queen's Bench included not only the judiciary but the "secretariat" as well. The Supreme Court Act had followed Nova Scotia's pattern in determining the title for the court's chief administrative officer. The act declared, "The Clerk of the Court shall be styled the Prothonotary and shall be appointed by the Lieutenant-Governor in Council."[82] Usually the prothonotary was a lawyer, or, at least, had some law training, for his duties extended beyond that of clerk. An important part of his work was "to attend upon the judges and perform all duties appertaining to any and all chamber and other business and proceedings."[83] A critical responsibility lay with record creation and record keeping. This was made clear at the court's inception when Morris announced the rules:

> All ordinary Writs of Summons shall be returned to and fyled with the Prothonotary of the Court ... There shall be a Record in each cause submitted to the Court for trial ... The Record shall be entered with the Prothonotary of the Court ....[84]

At the beginning, the secretariat, like the judiciary, consisted of one official. Therefore, the prothonotary carried out all of the duties required by the several courts. His title varied according to the function that he was serving at the moment. The act of 1880 explained:

> The clerk of the said court shall be styled "prothonotary," and "clerk of the crown and peace," or simply "clerk," and "master," according to the nature of the proceedings in the said court in which he shall intervene: in civil proceedings at law, "prothonotary" or "clerk"; in criminal proceedings, "clerk of the crown and peace"; in equity, "master ...."[85]

As the years progressed and court business increased, the secretariat was enlarged. In 1882, for example, the roster of court employees included a prothonotary, deputy prothonotary, two court stenographers, three clerks, a master in chancery, and an Equity records keeper.[86]

A position unique to Equity side of Queen's Bench was that of "master in equity." Frequently, this position, too, overlapped with others. The act of 1880 considered Equity side at length and stated:

> The Lieutenant-Governor in Council may from time to time appoint, during pleasure, one Master in Equity for the Province of Manitoba, one accountant, one referee in chambers (all of which offices may be held by one person) ....[87]

The act explained the nature of the referee in chamber's responsibilities. These were quasi-judicial and, with certain exceptions, could be administered with the same authority as that of a judge sitting in chambers. The referee was empowered to administer oaths, take affidavits, receive affirmations, and examine parties and witnesses. He could also make judicial decisions and issue orders.

Daniel Carey, the province's first prothonotary, arrived in Winnipeg in 1872 and was named to his position the following year.[88] He had studied law in Quebec and was bilingual. Thus, when it was necessary, Carey acted as court interpreter. He bore the burden of court administration alone until 1875 when an assistant was assigned to the prothonotary's office. Two years later two more assistants joined the staff.[89] During his tenure Carey was instrumental in the preparation of the first law reports to be published in the province. Written to

assist justices of the peace, the reports detailed the reasonings for two cases, conducted in chambers, by Chief Justice Wood. The volume included an introduction by Carey and came to be known as *Carey's Reports.*[90] In 1878 Carey left the prothonotary's position and went into successful private practice.

Allan Macdonald followed Carey with a three-year term in the prothonotary's post. Macdonald's successor was Geoffrey H. Walker who, in 1881, took the position which he was to occupy for nearly fifty years.[91] Originally from Ontario, Walker began his training as a law clerk in the Winnipeg office of his father, D.M. Walker.[92] He practised briefly in rural Manitoba before being named prothonotary. It was during Walker's tenure that court business increased dramatically. In a letter addressed to Attorney-General J.A. Miller Walker urgently requested assistants, arguing that "the work has increased in the office tenfold since Mr. Daniel Carey was Prothonotary, [but] I am allowed only the same number of assistants as he had."[93] To bolster his request Walker enumerated his many duties. These included keeping track of "my criminal papers," reporting on criminal actions to the Dominion Government, keeping Assize records, indexing the appearance book, indexing the judgment book, and balancing the books. He received extra help in 1883 when administrative staff was significantly boosted in numbers. Five employees were assigned to the Equity side at that time.[94] In 1885, with business still on the increase and many court officials away, Walker's considerable legal skills were called upon. In his position as Clerk of the Crown and Peace, he conducted the Crown

prosecutions for the Eastern Judicial District.[95]

It appears that a separate Equity administration was formed about the time that Walker asserted the need for more assistants. William Leggo became the master in equity, circa 1882, having "reached the city in November 1880, where he was almost immediately asked to assist in the equity work of Queen's Bench."[96] Leggo had been master in chancery in Hamilton and had written two books on equity. *The Practice of the Court of Chancery for Ontario with Some Observations on the Pleadings in That Court, In Two Volumes,* incorporated information relating to the many procedures necessary to the conduct of chancery business.[97] Leggo discussed in detail such topics as commencement of a suit, the bill, demurrers, decrees and orders, injunctions and restraining orders, and sale of infants' estates. In a third volume, *Chancery Forms,* he specified the wording and format of the forms required to expedite the procedures discussed in the first two volumes.[98] The three books were doubtless of great assistance to judges and administrative staff. That Leggo entered his new position during the earliest period of separated Equity administrative staff is suggested in a newspaper comment from the Manitoba Free Press. "For a long time," wrote the Free Press, "he performed the duty of seven officers, but the great increase of business rendered necessary the appointment of others."[99] Leggo died in 1888. His Manitoba career, though short, paralleled that of Chief Justice T.W. Taylor. Jointly, they must have presented an exceedingly strong stance for equity jurisprudence, practice, and

procedure.

P.A. MacDonald, the second and last master in chancery to hold the position, took office in 1888. Like others before him, he had studied law in Ontario, and practised for a period of time in Manitoba before his chancery appointment. It was to be during MacDonald's tenure that Equity side of Queen's Bench would see its closing days.

There had been a certain tension between the two sides of Queen's Bench since its inception in 1872. Although Equity had been instituted to ameliorate the rigidity of Common Law, the sometimes conflicting judgments of the two sides could be counter productive. John S. Ewart indicated the problem when he referred to one side restraining the other side. He also pointed to difficulties associated with the style of pleadings. It was frequently impossible for Equity to provide a remedy "until the appearance of the pleadings has been altered."[100]

Another issue arose with respect to the income of administrative officers. When Daniel Carey assumed the position of prothonotary he was granted a salary of one thousand pounds per annum, "plus all the fees he collected from litigants, up to a total of five hundred pounds."[101] This arrangement had similarities with the fee exactions practised by clerks of the old English Chancery Court. It must have occasioned abuse because an act of 1885 expressly prohibited the practice, "No officer or clerk shall take for his own use or benefit, directly or indirectly, any fee or emolument whatever, save the salary which he

may be entitled to by law ...."[102]

England's Judicature Acts of 1871-76 had already set a precedent by incorporating Court of Chancery within the Supreme Court of Judicature. Manitoba had, in 1886, redistributed the jurisdictions of the two sides of Queen's Bench. Improved dispensing of justice achieved at that time pointed the way to further reform. In 1895 a new Queen's Bench Act was passed which accomplished a similar end to that of the Judicature Acts. The act described and specified the court's jurisdiction:

> The Court shall hold plea in all and all manner of actions, suits and proceedings, cause and causes of action, matters, suits and proceedings, whether at law, in equity, or probate, or howsoever otherwise as well criminal as civil, real, personal and mixed or otherwise howsoever; and may and shall proceed in all such actions, suits, proceedings and causes by such process and course of proceedings as are provided by law, and as shall tend with justice and despatch to determine the same ... and the Court may and shall, with or without a jury, as provided by law, decide and determine all matters of controversy relative to property and civil rights both legal and equitable ....[103]

The act reiterated in section 26 that "[t]he Court shall have the like jurisdiction and powers ... possessed and exercised by the Court of Chancery in England in respect of the matters hereinafter enumerated or referred to ...." Following this statement, the act itemized all equitable matters that would now be incorporated into Queen's Bench jurisdiction. These virtually duplicated those that had been stated in the act of 1880 (described above).

The sides of the court were thus drawn together into one system. Equity

and common law were to exist in parallel within the renewed Court of Queen's Bench.[104] Any action that would previously have been brought to Equity side could now be brought to Court of Queen's Bench. Cases and proceedings were no longer to be restrained; all actions could be disposed of under the new comprehensive jurisdiction. Where the rules of equity and law came into conflict, those of equity were to prevail. Remedies were made available from each of the former sides. Injunctions, specific performance, and damages could now be awarded as remedies for contemplated or actual injuries. Prohibitory injunctions would prohibit certain actions; mandatory injunctions would compel actions. Specific performance would compel the completion of a contract. Damages would provide compensation for an injury.

Arrangements were made to accommodate pending cases.[105] They were to be handled, up to the stage of trial or hearing, according to the previous practice, and afterward, according to the provisions of the new act.[106] Where elements of a case continued over an extended period of time, the case was permitted to conclude under the provisions of the Winding Up Act.[107] The terms of this act provided that "the winding-up of the business of the company or any matter or proceeding relating thereto may be transferred from one court to another."

The reforms facilitated better carriage of justice and they also provided enhanced administrative efficiency. Equity and Common Law had previously required separated record keeping systems. Now a single system sufficed.

Benefits thus accrued to administration as well as to justice.

The Court of Queen's Bench in Equity was constituted in 1871, the same year that the Judicature Acts began the abolishment of England's Court of Chancery. Why was equity introduced into Manitoba at this time? As mentioned above, it was an English system of law that entered the western territory via the Hudson's Bay Company charter. That predisposed the inclusion of an equitable jurisdiction in Manitoba's court system. The court and legal system of Ontario was transplanted, practically, from that province to Manitoba. Ontario's Court of Chancery was functioning during this period and that meant that the pattern in use there could easily be replicated.

Why did Equity endure in Manitoba when it had ceased to exist in other provinces? Equitable doctrines tend to develop when the common law cannot meet the demands of a changing sociely. Equity established itself during the 1870s, along with other superior and inferior court jurisdictions. It served the administration of justice well through the rapid societal changes of 1872 to the early 1880s. But as British-Ontarian society became entrenched, so did the court and legal "culture." It was, perhaps, to be expected that Manitoba would follow Ontario's lead and abolish its Court of Queen's Bench in Equity.

Equity remains today an integral part of the justice system. It is particularly important in the area of trusts, where its principles protect the interests of the beneficiary.[108] With respect to wills, equity can alleviate a situation in which a settlement may be morally or ethically unacceptable, even

though technically legal. Equity is valuable in cases of breach of contract, where its remedy of compelling specific performance can bring about a fair resolution. Where a contract has been signed, and it is discovered that the parties' interests have been misrepresented, equitable judgment can be brought to bear in having such a contract annulled. The application of equity in the modern court allows fairness and good conscience to overcome complex legal rules.

Equity originated as a general concept embracing fairness and impartiality. Early judges employed its principles to mediate the strictures of the common law. In the Middle Ages equity evolved into a distinct court, which eventually became mired in its own rigidity. The institution of Equity was transported to several countries through the vehicles of colonialization and settlement. Equity entered the Canadian North-West via a business venture, and later was constituted as a side of Manitoba's superior court. Finally, Equity became unserviceable as a separate entity, and it was reintegrated with Common Law to form the new Court of Queen's Bench. Equity had come full circle and its ancient role, dispensing fair justice, had been reclaimed.

Notes

1. Gibson and Gibson, 60-63.

2. Adams G. Archibald to Robert Pither, November 27, 1870 (MG12 A1, Item 116), Adams G. Archibald Papers, PAM. The "MG" number is a location code at Provincial Archives of Manitoba.

3. J.S. Dennis, Ottawa, to Adams G. Archibald, March 22, 1871 (MG12 A1, Item 228), Adams G. Archibald Papers, PAM.

4. Chester Martin, *"Dominion Lands" Policy,* ed. Lewis H. Thomas (Toronto: McClelland and Stewart Ltd., 1973), 17.

5. Archibald McDonald, Chief Trader, Hudson's Bay Company, Fort Qu'Appelle, to Adams G. Archibald, February 24, 1871 (MG12 A1, Item 200), Adams G. Archibald Papers, PAM.

6. Reta Shore, ed., *Ten Dollars and a Dream,* (Steinbach: Parkhill/Cheval Community Club, n.d.), 122.

7. D.N. Sprague, *Canada and the Métis, 1869-1885* (Waterloo: Wilfred Laurier University Press, 1988), 8-9.

8. Adams G. Archibald, Ottawa, to H.L. Langevin, Minister of Public Works, Ottawa, August 6, 1870 (MG12 A1, Item 10), Adams G. Archibald Papers, PAM.

9. Joseph Howe, Secretary of State for the Provinces, to Adams G. Archibald, November 4, 1870 (MG12 A1, Item 77), Adams G. Archibald Papers, PAM.

10. Joseph Howe to Adams G. Archibald, June 15, 1871 (MG12 A1, Item 359), Adams G. Archibald Papers, PAM.

11. Joseph Howe to Adams G. Archibald, October 24, 1870 (MG12 A1, Item 55), Adams G. Archibald Papers, PAM.

12. J.C. Aikins, Secretary of State and Registrar General of Canada, to Adams G. Archibald, July 28 and 29, 1870, *Records: Register of Letters Patent* (MG12 A1), Adams G. Archibald Papers, PAM.

13. K.G. Pryke, "Adams Archibald," *Dictionary of Canadian Biography* 12 (1988).

14. Gibson and Gibson, 75.

15. Gibson and Gibson, 119.

16. Ibid., 135.

17. Ibid., 143.

18. *Statutes of Manitoba,* 1871, c.2.

19. *Statutes of Manitoba,* 1873, c.4. The first court term of the year, in January or February, was called "Hilary Term." The spring term, "Easter," was followed by "Trinity," and then "Michaelmas" in late autumn. At the third session of parliament (1873) the number of terms was reduced to three, Hilary, Easter, and Michaelmas. Terms per year varied, however. In 1876 the number was increased again, by legislative amendment, owing to an increased backlog of cases.

20. *Statutes of Manitoba,* 1871, c.2.

21. Gibson and Gibson, 93.

22. Ibid., 100.

23. "Queen's Bench and Court of Appeal Judges," (P1464 A2329), Archive of Manitoba Legal-Judicial History, PAM. The "P/A" number is a location code at Provincial Archives of Manitoba. A puisne justice is defined as "a judge of a superior court, inferior in rank to chief justices." Definitions are taken from *Canadian Oxford Dictionary* (1998), unless otherwise noted.

24. Read, no.2, 472.

25. Ibid., 482.

26. A court of record is defined as "a court, the records of which are maintained and preserved, and which may punish for contempt of court." Yogis, s.v. "court of record."

27. *Statutes of Manitoba*, 1874, c.2, s.2.

28. *Statutes of Manitoba*, 1880, c.32, s.104.

29. Read, no.2, 484.

30. Gibson and Gibson, 143.

31. Ibid., 146.

32. Read, no.2, 484.

33. Court of Error is defined as "In its most general sense ... any court having power to review the decision of lower courts on appeal, error ... or other process." Black, s.v. "court of error." Court of Appeal or Appellate Court is defined as "a court having jurisdiction to review the law as applied to a prior determination of the same case." Yogis, s.v. "appellate court."

34. *Statutes of Manitoba*, 1880, c.2, s.4-5.

35. In a letter addressed to Archibald, Secretary of State for the Provinces Joseph Howe enclosed a circular from Lord Kimberley, Downing Street, London, containing an "Order-in Council for the regulation of the form and type to be used in the printing of Cases, Records, and Proceedings in Appeals, and other matters pending before the Lords of the Judicial Committee of the Privy Council." Joseph Howe to Adams G. Archibald, May 19, 1871 (MG12 A1, Item 306), Adams G. Archibald Papers, PAM.

36. Gibson and Gibson, 92.

37. Ibid., 133.

38. Read, no.2, 483.

39. *Statutes of Manitoba*, 1871, c.2., s.1.

40. Gibson and Gibson, 180.

41. *Consolidated Statutes of Manitoba,* 1880, c.31, s.6.

42. Yogis, s.v."injunction."

43. Ibid., s.v. "specific performance."

44. Gibson and Gibson, 94-102.

45. Manitoba Court of Queen's Bench, *Rules of the Court of Queen's Bench of the Province of Manitoba As To Practice,* October Term, 1873, 36 Victoria (P1363 A285), Archive of Manitoba Legal-Judicial History, PAM.

46. Minutes of Meeting held in St. Andrew's School, October 6, 1873 (MG12 B1, Item 517), Alexander Morris Papers, Lieutenant-Governor's Collection, PAM.

47. Alexander Morris to John A. Macdonald, November 15, 1872 (MG12 B1, Item 12), Alexander Morris Papers, Lieutenant-Governor's Collection, PAM.

48. Jean Friesen, "Alexander Morris," *Dictionary of Canadian Biography* (1976).

49. Alexander Morris to David Laird, Minister of the Interior, February 18, 1876 (MG12 B1, Item 1986), Alexander Morris Papers, Lieutenant-Governor's Collection, PAM.

50. (J.C. Aikins) to Alexander Morris, December 6, 1872 (MG12 B1, Item 25), Alexander Morris Papers, Lieutenant-Governor's Collection, PAM.

51. Alexander Morris to John A. Macdonald, September 10, 1873 (MG12 B1, Item 467), Alexander Morris Papers, Lieutenant-Governor's Collection, PAM.

52. Alexander Campbell, Ottawa, to Alexander Morris, November 29, 1873 (MG12 B1, Item 81), Alexander Morris Papers, Ketcheson Correspondence Collection, PAM.

53. Friesen, "Alexander Morris."

54. Alexander Morris to H.L. Langevin, June 8, 1878 (MG12 B1, Item 293), Alexander Morris Papers, Ketcheson Correspondence Collection, PAM.

55. Gibson and Gibson, 115, 126.

56. *Manitoba Free Press,* quoted in Gibson and Gibson, 116-7.

57. Alexander Mackenzie, Ottawa, to Alexander Morris, Fort Garry, December 3, 1875 (MG12 B1, Item 166), Alexander Morris Papers, Ketcheson Correspondence Collection, PAM.

58. Hon. E.B. Wood, Hon. J. Dubuc, Hon. J.A. Miller, *The Orders of the Court of Queen's Bench In Equity*, 1881 (P1382 A786), AMLJH, PAM.

59. A.C. Campbell, *Manitoba Bar News* 2, no.6 (February 1930): 1-3.

60. *Statutes of Manitoba*, 1881, c.16, s.3.

61. Wood, Dubuc, Miller, 7.

62. *18 Canada Law Journal* (1880): 530, quoted in Gibson and Gibson, 139.

63. Bruce W. Hodgins, "Lewis Wallbridge," *Dictionary of Canadian Biography* (1982).

64. Read, 10, no.2, 481.

65. Ibid., 481.

66. Gibson and Gibson, 138-139. Guarantee was based on a formal procedure consisting of "registration of the title followed by investigation and filing of the owner's documents of title; provision for special proceedings, if necessary, to establish title validity; transfer of title to registered land through entry on the register; and guarantee of a perfect title, with an indemnity fund provided to compensate for any loss suffered by a land purchaser owing to error in the title certificate issued." "Torrens System," in Microsoft ® Encarta ® Online Encyclopedia 2000 (database online, cited September 1, 2000); http://encarta.msn.com © 1997-2000, Microsoft Corporation.

67. C.E. Hamilton, "Annual Report of the Attorney General's Department for the Year 1885," *Sessional Papers* (No.2): 5, Legislative Library of Manitoba.

68. John S. Ewart, "The Judicature Act," *Manitoba Law Journal* 1 (Winnipeg, 1884): 27-28.

69. *Statutes of Manitoba*, 1886, c.14, s.7.

70. *Statutes of Manitoba*, 1886, c.14, s.2.

71. *Statutes of Manitoba*, 1886, c.14, s.9.

72. *Statutes of Manitoba*, 1886, c.14, s.10-12.

73. "Queen's Bench and Court of Appeal Judges," AMLJH, PAM.

74. Upper Canada Court of Chancery, *Orders for the Regulation of the Practice and Proceedings of the Court of Chancery of Upper Canada from the Establishment of the Court in March,* 1837 (P1387 A876), AMLJH, PAM. The volumes represent eleven years: 1837, 1850, 1853, 1853 (subsequent), 1861, 1865, 1865 (subsequent), 1866, 1867, 1868, 1879.

75. T. Wardlaw Taylor and G.M. Rae, *General Orders of the Court of Chancery, With Notes and Forms,* 1865 (P1363 A296), AMLJH, PAM.

76. See Appendix B for Court of Queen's Bench Personnel.

77. Gibson and Gibson, 66.

78. Gibson and Gibson, 147.

79. Ibid., 78.

80. "Manitoba Bench Loses A Member," *Manitoba Free Press,* May 13, 1905, p.29.

81. "Law Society Resolution," *Manitoba Free Press,* May 13, 1905, p.29.

82. *Statutes of Manitoba*, 1871, c.2, s.3.

83. *Statutes of Manitoba*, 1885, c.15, s.52.

84. Chief Justice Alexander Morris, *Rules Of The Court of Queen's Bench Of The Province Of Manitoba As To Practice,* 1872, (P1363 A285), AMLJH, PAM.

85. *Statutes of Manitoba*, 1880, c.31, s.40.

86. "Administration of Justice Report," *Manitoba Public Accounts, Year Ending 1882:* 13-21, Legislative Library of Manitoba.

87. *Statutes of Manitoba*, 1880, c.16, s.1.

88. Obituary "Daniel Carey," *Manitoba Free Press,* January 9, 1889, in *Manitoba Biography,* 1886-1902, Legislative Library of Manitoba.

89. "Administration of Justice Report," *Manitoba Public Accounts, Year Ending 1875:* 10-14; "Administration of Justice Report," *Manitoba Public Accounts, Eighteen Months Ending 1876:* 16-21, Legislative Library of Manitoba.

90. *Judgments in the Queen's Bench Manitoba: Reported by Daniel Carey, Clerk of the Crown and Pleas,* 1875 (P1363 A297), AMLJH, PAM.

91. "Geoffrey H. Walker dies in 73rd Year," *Manitoba Free Press,* April 28, 1931, p.1.

92. D.M. Walker, one of the first lawyers to arrive in Manitoba, was appointed as justice for the Western Judicial District in 1882. Gibson and Gibson, 143.

93. Walker to Hon. J.A. Miller, October 8, 1883, Letter Book 1882-98 (G 2716), Court of Queen's Bench in Equity, PAM.

94. "Administration of Justice Report," *Manitoba Public Accounts, Year Ending 1884:* 53-77, Legislative Library of Manitoba.

95. Attorney-General C.E. Hamilton reported to Lieutenant-Governor J.C. Aikins that the work of the department was somewhat delayed because of the absence of court officials (himself included) who were called out to the "North-West campaign." During the period Prothonotary G.H. Walker was requested to conduct crown prosecutions. Hamilton, *Annual Report for 1885: 5.* In the same year William Perkins, first court reporter, wrote a memorandum to Chief Justice Wallbridge saying that "[e]vidence has been ordered but owing to the press of work in court we have not been able to get same ready, and we are consequently obliged to again ask Your Lordship to kindly make an order extending same." The memorandum is glued inside the front cover of *Court of Queen's Bench in Equity, Manitoba, Term Book [?]6 Victoria To ....* (G 2632), Court of Queen's Bench in Equity, PAM.

96. "Mr. Leggo Dead," *Manitoba Free Press,* April 2, 1888, p.4.

97. William Leggo, *The Practice of the Court of Chancery for Ontario with Some Observations on the Pleadings in That Court, In Two Volumes* (Hamilton, 1876), Great Library, Law Courts, Winnipeg.

98. William Leggo, *Forms and Precedents of Pleadings and Proceedings in the Court of Chancery for Ontario,* 2nd ed. (Toronto: R. Carswell, 1876), Great Library, Law Courts, Winnipeg.

99. *Manitoba Free Press,* "Mr. Leggo Dead."

100. Ewart, 27-28.

101. Gibson and Gibson, 94.

102. *Statutes of Manitoba*, 1885, c.15, s.56.

103. *Statutes of Manitoba,* 1895, c.6, s.24.

104. *Statutes of Manitoba*, 1895, c.6, s.38.

105. Pending is defined as "awaiting decision or settlement, undecided," and "about to come into existence."

106. *Statutes of Manitoba*, 1885, c.6, "Rules of the Court," no.983.

107. *Revised Statutes of Canada*, 1906, c.129, s.1.

108. Waddams, 89-92.

Chapter 3

Manitoba Court of Queen's Bench in Equity, 1872-1895: The Records

Manitoba's Supreme Court Act made no specific mention of records. That the court would keep records, however, was implied in the direction that, "The Clerk of the Court shall be styled the Prothonotary ....[1] In 1874 an act of the provincial legislature clarified the situation by declaring that "The said Court of Queen's Bench [shall be] a Court of Record [and] shall possess all such powers as by the laws of England are incident to a Superior Court of Record ...." This statement affirmed not only that the court would keep records, but also that it would do so in the English tradition.[2]

Queen's Bench court and judicial records were retained as the result of a process which had several stages. Documents, created in the course of business, accumulated and were generally maintained in a methodical fashion. The records reached a point at which they were no longer required for day-to-day use and they were stored in locations convenient to their creators.[3] About 1947, these materials began to be recognized as "archival" and they were taken into custody by the Provincial Archives of Manitoba. The archives, first located in the Legislative Library of the Manitoba Legislature, moved in 1975 to its present location on Vaughan Street. Court and judicial records, known as Records of the Attorney-General, were transferred to the new building at this

time. In 1981, the archives established a government records programme through which the creation and retention of government records were formalized and scheduled. During that year 8000 boxes and 1500 bound volumes, retrieved from various courthouses, were conveyed to the Provincial Archives. Included in this massive transfer were the records of Court of Queen's Bench in Equity. They comprised approximately 115 boxes of case files and 45 bound registers, materials whose creation had spanned the years 1872-1895.

Creation of the records depended upon legislation for its impetus. The fact that Equity was constituted as a part of Queen's Bench meant that it too would be a court of record. Records were identified in legislation which stated that the referee-in-chambers was to have "full power to administer oaths, to take affidavits, to receive affirmations, and to examine parties and witnesses, as the court may direct."[4] In this provision the administration of equitable justice was linked to the creation of particular forms of records.[5]

The tradition of Equity Court record keeping had been well established in England for some centuries. The English style and often the English substance of Equity documents were introduced into Ontario's Equity Court and practised there until that court closed (1881).[6] Upper Canada officials had at their disposal numerous regulations and guides for the practice and administration of equity. The earliest publication of these regulations (1837) described exactly how Court of Chancery records were to be kept:

> That the Master shall enter in a Book, to be kept by him for that purpose, the name or title of every Cause or matter referred to him; and the time when the Decree or Order is brought into his office; and the date and description of every subsequent step taken before him in the same Cause or matter; and the attendance or non-attendance of the several parties on each of such steps, so that such Book may exhibit at one view the whole course of proceeding which is had before him in each particular Cause or matter.[7]

This structured system of record keeping was transferred to Manitoba by judges, lawyers, and administrative officials who had trained and worked in Upper Canada. With the assistance of the regulations, officials introduced and re-established the Ontario/English patterns that served the administration of equity.

The functioning of Queen's Bench in Equity resulted in generation of several categories of records. These are described in Michele Fitzgerald's *A Research Guide To Court Records in the Provincial Archives of Manitoba.*[8] The categories are:

General Index, Equity
Registers of Pleadings
Minutes of Proceedings
Decrees
Decrees for Sale (without reference)
Decrees With Reference
Decrees for Foreclosure
Money Ledgers
Administrative Correspondence (not exclusive to Equity)
Case Files
Case Files, Infants
Judges' Notebooks (not exclusive to Equity)

There are three judges' notebooks that include the reasonings and decisions for

Equity cases. These volumes also contain County Courts, Chambers, other Queen's Bench, and Appeals cases.

Most Equity records, with the exception of the case files, are contained within the covers of registers and ledgers. The key that opens the door to the records is *General Index, Equity.*[9] This large register was created as the "locating device" which would lead to the pleadings registers, minutes of proceedings, decree registers, money ledgers, and case files. The index is divided into alphabet letter sections, in the style of an address book. Within each alphabet letter section suits are listed by style of cause, that is, by plaintiff's surname followed by defendant's surname, for example, "Bonneau v Goulet 607." ("Versus" is abbreviated as "v" or "vs.") The number is that which was assigned when the case was filed; this is the cross-reference leading to all related documents. Cases within an alphabet letter section are in numeric-chronological rather than alphabetical order. A typical listing of cases might begin with numbers 5, 19, 23, 29, 41. The reason for the gaps is that sequential numbers are dispersed across twenty-seven alphabet letter sections. The extra or twenty-seventh section contains the "Mc" and "Mac" surnames.

Case numbers in the general index incorporate all of the 8254 actions described in the registers of pleadings. The index employs ascending number order (with gaps as noted above) in all of its alphabet letter sections. There is one exception to this pattern, the Mc section. This section begins with nine cases not in the normal ascending order:

Macdonald	v	Bray	610
Macdonald	v	Reynolds	395
Macarthur	v	Morisson	266
Macarthur	v	Morisson	270
Macarthur	v	Morisson	280
Macarthur	v	Gilliland	301
Macarthur	v	Marshall	302
Macarthur	v	McKeagney	345
Mackay	v	Marshall	295
McDonald	v	Collingwood	5
McKinnon	v	Green	7

The group of nine represents all the Mac surnames extracted from the first register of pleadings. It appears that the compiler of the index had originally intended to separate Mac from Mc names. As he proceeded to the second register of pleadings, however, and began to transfer cases to the index, he rejected the plan. Mac and Mc cases from the second register onwards are intermixed, so that their numbers appear in the index in normal ascending order.

Occasionally a case number, with its attendant plaintiff's and defendant's surnames, occurs more than once within an alphabet letter section. This usually indicates that the entry was duplicated in error. Sometimes a suit is given an "A" or a "half" designation, for example, "Chappell vs Morris 1530½." This technique is used to insert the case into an already existing chronology. Certain entries are styled somewhat differently. In place of the defendant's name are written descriptive words such as, "An Infant," or "A Lunatic," for example, "Anderson G. An Infant." These represent actions in which a petition has been made on behalf of the named person and there is no defendant. In a somewhat similar way the last eight cases, numbered 8247 to 8254, are styled with the

words "Winding Up" in place of a defendant's name. These cases, which involve companies rather than individuals, are those that were permitted to conclude under the provisions of the Winding Up Act.

General Index, Equity exhibits a curious anomaly at the end of each alphabet letter section. A shorter list of surnames has been written there; they have been recopied from the main body of the section. These cases have been assigned new numbers; about half also show their original numbers. A significant percentage of these names are those of the "infants" (under the age of twenty-one) whose suits passed through the court in connection with the sale of Métis children's lands.

The "A" letter section serves as an example. Eight surnames have been recopied from the original sequence and put at the end of the section:

	Original #		New #
Archand	136	Jacques	1
Archand	143	Alexander	1
Auger		Anne	2
Auger	220	Guillaume	2
Allard		Louis	3
Allard		William	3
Allard		Elizabeth	3
Anderson	174	Mary Ann	4
Anderson	112	Alfred	4
Anderson	111	Gustavus	4
Anderson		Maria	4
Allary	214	Maybeline	5
Allary		Hyacinth	5
Atkinson	379	Marie	6
Arcand		Genevieve	7
Adams	232	Jane G.	8

Under this system infants having the same surname, regardless of relationship,

are gathered together under the new number. That number refers to the actual case file, known as a "pocket." (The researcher, however, also needs to know the previous number in order to access other related documents such as registers of pleadings.)

The new system seems to have been introduced as a matter of expediency, perhaps in an attempt to gain quicker access to the infants' pockets, or perhaps because of a shortage of storage space for the pockets. The practice had unfortunate results, however. Within some alphabet letter sections batches of surnames were brought under a single number. The "N" section, for example, combined two "infants" by the name of "Ness," one by the name of "Nolin," and four by the name of "Normand," all under number 117. The "W" section lumped five different infants' names under number 147. An economy of numbering was achieved, but at the expense of individuals and the visibility of their cases. Approximately 520 infants' petitions were reduced to 149 case file numbers. (The infants' names can still be found in their original chronology in the registers of pleadings.)

The seven registers of pleadings were created during the twenty-three years that Queen's Bench, Equity operated. They encompass the pleadings for all the cases listed in *General Index, Equity*. Case numbers in the pleadings registers correlate directly with those of the index. Each register of pleadings, in addition, has its own unique index. There are two exceptions. The first register has no index at all, although originally there may have been one in a separate

booklet form. The second register is missing alphabet letter sections "A" to "L." All of the case number/style of cause information found in the registers, including registers one and two, is replicated in *General Index, Equity.*

Pleadings appear in the registers under eight column headings: Number; Style of Suit; Bill, Date of Filing, etc.; Answer, Demurrer, etc., and Date of Filing; Date of Order Pro Confesso, and of Entering Note of Default; Replication and Date of Filing; Note Disputing Claim and Date of Filing; and Remarks. Pleadings are defined as:

> Statements in writing served by each party alternatively to his opponent, stating the facts relied on to support his case and giving all details his opponent needs to know in order to prepare his case in answer. The usual pleadings in an action are the statement of claim, the defence, any counterclaim, a reply to the counterclaim, and any demands for further and better particulars.[10]

Each pleading has a purpose and, taken together, they reflect the progress and time span of a suit.

"Number" refers to the case number and it is used to access all related records, including case files. A "Style of Suit" (cause) entry is more detailed in the registers than in the index. It includes the full names of plaintiff(s) and defendant(s), sometimes a designation such as "Gentleman," and usually an address. If a petition is being made on behalf of the plaintiff (and there is no defendant) the plaintiff's name is sometimes preceded by "Re," for example, "Re the Estate of William Inkster, late of Point Douglas, Parish of Winnipeg and St.

John, Merchant, Deceased." Under the heading "Bill, Date of Filing, etc." is entered the type of document used to initiate the suit. The two most common documents are bill of complaint and petition. The former is employed when there is a contentious issue, and thus, a plaintiff and a defendant. The latter is used when a petition is being presented to the court in the name of a plaintiff who is unable to do so. Occasionally to be seen in the style-of-suit column is the term "Information." This designation is used "If the suit is instituted on behalf of the Crown [and] the matter of complaint is offered to the Court, not by way of petition, but of information ...."[11] Bill of complaint, petition, or information is followed, with few exceptions, by the date of filing. If the defendant intends to contest the suit an answer, or demurrer (depending on the plan of defense), will be filed and noted in the appropriate column, with the date of filing. If the defendant fails to file a response in the allowed time, he is in default, and the bill is taken as "pro confesso." That is, the defendant is assumed to have confessed and the plaintiff is awarded the decree appropriate to the suit.[12] When the plaintiff makes a pleading in response to the defendant's answer or demurrer, that is entered as a "replication," again with the date of filing. The "Note disputing claim" column accommodates entries referring to either party's disputing the claimed amount. Under "Remarks" are to be seen a variety of notations, usually including the final disposition of the case, and the instrument used to effect the remedy, for example, "Decree absolute for Plaintiff, 2nd Sept. 1885."

A comparison of *General Index, Equity* with the registers yields information about how the index was created. Close examination of the handwriting in the index shows entries made in a very consistent hand, always with the same pen and ink.[13] This hand also appears in the registers, but not until 1894. The date correlation suggests that the index was prepared, not as a running index as it outwardly appears, but sometime after 1894, possibly 1895, after closing of Court of Queen's Bench in Equity. At that time entries were recopied from the register indexes into the new comprehensive *General Index, Equity*. (Check marks beside styles of cause in the registers were probably used to verify that every entry was transferred.)

A second circumstance points to a late date for preparation of the index. A vendor's label inside the front cover of the index indicates that the index was purchased from Robt. D. Richardson, Stationers, Winnipeg, order number 27295. Register seven (but no other) was purchased from the same stationer, order number 29252. The proximity of the order numbers places the two volumes in approximately the same time period. Robt. D. Richardson, Stationer, is listed in Manitoba Directory, beginning 1878-79. Therefore, the volume could not have been purchased earlier than that date, and, at order 27295, probably considerably later.

Close scrutiny of the recopied infants' indexes also raises some interesting possibilities regarding chronology of index creation. The "old" case numbers are entered in a distinctly different hand, with different pen and ink.

Digits are "squeezed in" as though they were added at a later date. The highest old case number inserted in this manner is that of John G. Barber, 394. Comparison with registers of pleadings shows that this case was filed July 16, 1880. Evidently the compiler of the index decided to separate infants' cases only up until that case number/date, and leave the remainder in the main body of the index. Since a significant proportion of infants' cases passed through the court during 1879-80 that would seem a logical decision.

The time of reinsertion of the old numbers is still a question, however. Separated infants' cases belonging to alphabet letter "F" have a unique notation at the end. In red ink there is penned what appears to be the date, "1904." This could indicate that the ironical "renumbering of the renumbering" occurred as late as 1904. Possibly there was a realization that the first renumbering had not achieved the anticipated efficiencies, or perhaps circumstances, such as the necessity for easy access to the case files, had changed.

Examination of printers' marks can also provide information about creation of registers of pleadings. The first register has a different appearance from the others. It is a larger volume, there is no index, and the entries are not as detailed as those of registers two to seven. The stationers' label, inside front cover, indicates that the register was purchased from Hunter, Rose & Co., Toronto, August 9, 1875. This was nearly three years after Queen's Bench in Equity heard its first case. Therefore, pleadings in Equity up until that time must have been kept in a different volume, or simply in case files, and transferred to

the register later. Some information appears to have been lost in the process. Suits 1 to 38, entered by Prothonotary Daniel Carey, show little detail; they especially lack dates of filing.[14] Beginning at case 39 (February 9, 1878), entered in a different handwriting, information becomes much more detailed. This would be approximately the time that Allan Macdonald took the position of prothonotary.

The registers of pleadings, a complete set, span the period 1872-1895. The first register has no front cover title, and the spine is torn away. The other six are entitled either *B.R.* (Banco Regina) *In Equity, Register of Pleadings*, or *Q.B.* (Queen's Bench) *In Equity, Register of Pleadings*. Included in the titles of the last five registers are the numbers of the volumes. Indexes of volumes two to seven were kept as running indexes. They exhibit the handwriting of the numerous administrative officials who were involved with Equity record keeping. Suits in registers two, three, and four were originally indexed with page numbers, but later, case numbers were added, for example, "6 Monkman v Sinnott 696." The early pages of register four show both numberings at the same time, for example, "Man. Mortgage and Loan Company v McMillan 27/2623." Midway through the volume this ceases and only the case numbers appear from that point onwards. Also in register four an unknown official entered suit "4000" directly after "3099" and so the error occurred that caused the gap in the Equity numbering system. Register four shows on its inside front cover the inscription, "Commenced 26th March 1885 J.A.W. Innes." Innes was

appointed to Queen's Bench in Equity in 1884, as a clerk. The inscription is one of the few instances when a personality shines through the formality of Equity records.

Entries in the registers of pleadings, though brief, can sometimes hint at the issues that generated Equity suits. Many banks, mortgage, insurance, investment and loans companies, as well as private creditors, appear as plaintiffs, especially from 1882 onwards. Railway, land, commercial, and manufacturing companies are often named as parties in Equity actions. Where there is a group interest in ownership of a property, such as a church or school, the sale of such property sometimes becomes an Equity case. Partnerships in businesses and firms frequently pass through Equity. Infants' cases, begun by petition, may be Métis or non-Métis, the requisite being that the plaintiff be under the age of twenty-one. (However, in 1878 the age at which an infant "with consent of father and mother may convey lands" was lowered to eighteen.)[15] A few historically known names appear in Equity actions: Hudson's Bay Company, Manitoba Southwestern Railway Colonization Company, Vulcan Iron Company, J.H. Ashdown, William Hespeler, John Norquay, Jacob Schantz, and John C. Schultz.

An Equity case in progress was recorded through minutes of proceedings. Entries in minute books furnish brief notes on proceedings in the court room or judge's chambers. Minutes of a case include: case number, usually but not always, date, time (i.e., "Court opened at twelve noon."), style of cause, judge

present, counsel present, witnesses sworn and examined, exhibits entered, and a summary of the judgment.[16]

Only one volume of Equity minutes of proceedings is extant. Created during 1894-95, the record book is entitled *No.4, Registrar in Equity, From* March *7th, 1894, To July 31st, 1895.* The volume is indexed by style of cause. In the alphabet letter section "E" is the entry "Equity sittings 15, 40, 76, 116 ...." The notation is somewhat misleading; corresponding pages actually list equity suits slated for the next court term. Listings are followed by minutes of proceedings for the listed suits, always with the addition of more suits heard during the same term. All actions in the volume are in Equity, except possibly the last four, which are not numbered and are not found in *General Index, Equity.* (Other unnumbered cases, and there are many, can be found in the index through style of cause.) *No.4, Registrar in Equity* contains the records for the last cases heard in Equity (the last minute is dated July 31, 1895) so it might be expected that it would include all the suits filed in the last register of pleadings. That is not so. Many of the actions filed in 1894-95 never reached hearing in Equity. Instead, they were heard as civil actions in the amalgamated Court of Queen's Bench. The first suit recorded in *No.4, Registrar in Equity* was minuted thus:

> Wednesday, Mar.7th, 1894
>
> Killam J[ustice].
>
> Baker
> V No.7949
> Coke

Chaffey for Plaintiff.
On motion of Chaffey the usual decree
on bill for sale under judgment.

Although not technically Equity records, two other volumes have certain connections with suits commenced on Equity side. These are record books that contain minutes of proceedings of Queen's Bench En Banc. Court of Queen's Bench En Banc acted as the appellate court for suits appealed from County Court, Surrogate Court, and Queen's Bench (including Equity).

Chambers and En Banc Record Book (1872-74; 1883-88) is entitled *Court of Queen's Bench, Manitoba, Term Book, [?]6 Victoria To ....* As the dates indicate, the volume records actions from two different periods of Queen's Bench activity. The first section of the volume begins October 8, 1872, with Court of Queen's Bench first hearing, and concludes June 29, 1874. Chief Justice Morris heard the October term cases; Chief Justice Wood and Justices McKeagney and Bétournay began hearings in January of 1873. Actions in this section appear to be Chambers and En Banc cases and a few can be identified as having been referred from Equity. Suit numbers are, oddly, rather high. Barber vs Dease, heard at the first sitting of the court, October 8, 1872, is listed as case 189. Why is the case number so high? Were suits carried over from General Quarterly Court, retaining the numbers that they had in that court? Were suits filed and did they accumulate between constitution of the Supreme Court in 1871 and first court hearing in 1872? Were appeals suits assigned a higher block of numbers, beginning perhaps at 150? These questions remain unanswered at the time of

this writing.

The second section of the volume is the easier to comprehend. It was used to record minutes of proceedings of Queen's Bench En Banc from Hilary Term, February 5, 1883, to Trinity Term, July 20, 1888.[17] It is to this part of the book that the "index" refers. The "index" is not really an index, however. Untitled, it consists of six short lists of cases, possibly those slated to be heard during the following terms, or perhaps those made "remanets" from previous terms.[18] The six lists extend only from Trinity Term, 1884, to Easter Term, 1886, and they include only a small percentage of the cases heard. A few of the suits are designated "Equity Rehearing." These have been transferred from Equity to En Banc Court and the original references can be located in *General Index, Equity.*

En Banc Record Book, 1888-97, bears no actual title, though a torn scrap glued to the front cover is worded "from [October 15] '88 to Dec.23, '97."[19] This volume contains appeal cases and it follows directly from the second section of *Court of Queen's Bench, Manitoba, Term Book [?]6 To Victoria* .... The volume is indexed and, as with *No.4, Registrar In Equity* index, the "E" alphabet letter section shows the entry "Equity sittings." But here the usage is different. The pages indicated simply show a statement such as "Equity sittings fixed for January 15, 1895." In other words, the justices planned in advance the date for Equity hearings. Scattered throughout the record book are minutes of proceedings for actions transferred from Equity to En Banc court. That these are

Equity rehearings is not discernible from the index. The researcher is obliged to locate them by leafing through the pages of the volume. The first rehearing occurred December 3, 1888 and was minuted thus:

> December 3rd, 1888.
>
> Balfour
> V
> Drummond Equity Re.Hg. (2 appeals)
>
> Howell C. and Vivian for the Plaintiff.
> Hough for Drummond.
> Muloch for Slaven.
> Culver for Williams.
> Perdue for Brathwaite.
> Wilson for Harvard and Van Worthe.
>
> Ptffs. appeal stands until Dfts. appeal heard.
> Dfts. Slaver, Williams, Brathwaite, and Van Worthe appealing. Culver took up argument. Muloch took up argument. Court adjourned until 12 o'clock.
>
> [The hearing continued next day with the following minutes:]
>
> Culver cited some authorities.
> [?] continued argument.
> C.P. Wilson took up argument.
> The prothonotary fell asleep.

Equity proceedings produced four different types of decrees: decrees (general), decrees for sale (without reference), decrees with reference, and decrees for foreclosure. Master in Chancery William Leggo explained the decree:

> A decree is a sentence or order of the Court, pronounced on hearing and understanding all the points in issue, and determining the right of all parties to the suit, according to equity and good conscience.

It is either interlocutory or final.[20]

Leggo further explained that "There are some cases of decrees which, although they are final in nature, require the confirmation of a further order of the court, before they can be acted upon."[21] He continued, pointing out circumstances where an order was required: decrees in suits involving infants, decrees where the bill is ordered to be taken pro confesso, decrees for foreclosure, and decrees issuing from suit for redemption of mortgage.

Decrees encapsulated the judgment of the court and, unless further orders were required, brought the suit to conclusion. The functioning of Equity produced seventeen volumes of general decrees, one of the volumes being an index.[22] Volumes are identified by alphabet letter and titles are simple, for example, *Decrees E.* The titles and chronology of the first four books are confusing:

Orders in Equity B	1875-1881
Index To Book C	[1875-1879]
Decrees in Equity C	1875-1879
Minute Book A	1880-1882

The remaining thirteen volumes follow in expected order and they span the years 1882 to 1898.

The earliest decree volumes can best be understood in the order B, C, A. Volume B has a front cover title of *Queen's Bench Orders in Equity B* and a spine title of *B.R. Orders, Equity B, From Mar.5th, 1875 To Mar.30th, 1881.* This is the only volume of the group that is titled "Orders" and the term is significant.

The book was used until February 15, 1879 (case number 45) to record preliminary orders and orders that were incidental to actual proceedings in court. Volume C, entitled (front cover) *Queen's Bench Decrees in Equity C* and (spine) *B.R. Decrees in Equity C, From Mar.3rd, 1875 To June 3rd, 1879,* was used in parallel with Volume B until August 14, 1878 (case number 45). Volume C, however, recorded decrees ensuing from court proceedings and from adjudication of the main points at issue.[23] Following decree 45 this parallel system of record keeping was abandoned and Volume B temporarily fell into disuse. Volume C continued in use for all types of decrees. At this juncture, most of the cases were those of infants, and decrees generated from these filled the remainder of the book. When the last page had been completed, Volume B was reclaimed. Decree 177 was entered, immediately following 45, and infants' decrees, for the most part, completed Volume B. At that point Volume A was brought into use.[24] Its title is misleading for it reads: *Minute Book A, From Nov.28th, 1880 To February 22nd, 1882.* Contents, though, are like that of C and the latter part of B, and they reflect the dispensing of decrees during the period when a large number of infants' cases passed through the court.

Volumes B and A are not indexed but C has a separate index in booklet form. During the early years of Equity's functioning, most court registers and ledgers were of the enormous variety (12 x 18 inches), thick and heavy. They did not always have self-contained index sections, and, when they didn't, separate, smaller indexes were prepared in booklet form. Sometimes these

were tied into the bindings of their corresponding volumes, sometimes not. Volumes B, C, and A are of the large, heavy variety; C has its companion booklet index, which is not tied in. The index is simply titled *Index To Book C.*

Alphabet letter sections of this index appear to be oriented to the infants' cases; pages are ruled horizontally into two parts, the upper part listing infants' suits, of which there are many, and the lower part listing plaintiff/defendant suits, of which there are few. The overwhelming number of infants' listings may simply be an indication that this type of decree was the appropriate instrument for concluding such suits. Of the 169 decrees indexed, 145 are infants' decrees.

Volumes E to Q (there is no D) are of the smaller size (9¼ x 14¼ inches) adopted around 1882. All titles incorporate the words "Record of Decrees" with beginning and ending dates. These handwritten decrees commence with the words "In the Queen's Bench In Equity" until the end of 1895 (Volume P), after which they begin with "In the Queen's Bench." Only two decrees in *Decree Book Q* have a corresponding style of cause in *General Index, Equity.* The remaining decrees were issued from civil cases heard by the amalgamated Queen's Bench.

Although there are apparently no decrees extant from the first three years of Equity's functioning, it would seem that the records are complete from that point onward. Decrees in Books E to Q deal with several matters, including lands and mortgages, fraudulent deeds, liens, and the staying of waste. Unlike minutes of proceedings, the decrees are extensive and detailed. They provide

information about the general progress of an action through the court system. A decree states the judgment or decision of the court, together with the consequences of that judgment. The core paragraph of an Equity decree usually begins "This court doth order and decree that ...." Consequences follow, generally through instructions regarding disposition of the land or property at issue. The sequence of information to be found in decrees may include the style of cause (plaintiff's and defendant's names), date the decree was issued, a brief summary of the court decision and orders, date the decree was entered in the register, and signature of the administrative official.

The second type of Equity decree, decree for sale, was created as a result of proceedings related to mortgage actions.[25] Full legal description read, "Decree for sale, account taken by the registrar, with order for payment and delivery of possession."[26] When the plaintiff filed a bill of complaint for payment of mortgage security, and the defendant failed to respond with answer or demurrer, the court made an account of moneys owed (usually on dorso side of the decree). If the defendant subsequently paid the moneys owed, the court "ordered and decreed that the said plaintiff do assign and convey the said premises free and clear of all incumbrances to the said Defendant ...."[27] If payment was not forthcoming the court "ordered and decreed that the said premises be sold, either by public auction, tender or private contract ..." and the moneys due to the plaintiff be paid out of the sale.

Three volumes of decrees for sale are extant, extending from 1882 to

1887. Unlike the handwritten decrees of volumes A to Q, these are two-page printed legal forms, patterned after the forms specified in Wood, Dubuc, and Miller's *Orders of the Queen's Bench in Equity, With Forms.* The decrees display longhand only in the blank spaces reserved for data specific to the particular case. Decrees for sale in the first volume, printed on blue paper, may have existed originally as separate documents and been bound at a later date. Pages of each decree are numbered, by hand, in space left for the purpose. Decrees for sale in volumes two and three are printed on white bond paper. These volumes employ paired page numbering, that is, the two pages of each decree bear the same number. Decree for sale volumes are indexed.

Mortgage actions in Equity could, similarly, produce decrees for foreclosure. Full legal description of this decree was "Decree for foreclosure, account taken by Registrar, with order for payment, and delivery of possession."[28] Following the plaintiff's filing a bill of complaint, and the defendant's failing to reply through answer or demurrer, the court, through decree, ordered the calculated amount to be paid to the plaintiff. Where the defendant continued in default of payment he was "absolutely debarred and foreclosed of and from all equity of redemption in and to the said premises."[29]

Five foreclosure books span the period 1881-89.[30] All are entitled *Foreclosure Book*, with the addition of volume number; the last three also show *Decree Without Reference* as part of the spine title. Decrees for foreclosure, like decrees for sale, are printed legal forms with spaces provided for data

specific to each action. Handwritten registrar's calculations, including total amounts due, appear on dorso side of each decree. Foreclosure books, with the exception of D, are indexed by style of cause.

Also resulting from proceedings related to mortgage actions was the decree with reference. Full description of this decree reads "Decree for sale, with reference as to encumbrances, and orders for payment and delivery of possession."[31] Where the defendant was in default of payment the decree ordered that "all necessary enquiries be made, accounts taken, costs taxed, and proceedings had for redemption or foreclosure, and that for these purposes the cause be referred to the Master of this Court."[32]

"Necessary enquiries" were directed towards discovery of any encumbrances against the property. The master received instruction to make these enquiries via a praecipe, a brief written request. He penned his findings in the "master's report," which became part of the case file. The report incorporated costs and calculations; therefore, these do not appear on dorso side of a decree with reference.

Four decree with reference books are extant.[33] Titles are self-explanatory, incorporating *Decree With Reference* with the volume number. The first volume bears the longer title of *Praecipe Book With Reference A.* Volumes (1882-1895) are indexed by style of cause; case numbers are not provided. *Decree Book C* uses paired page numbering.

Mortgage actions generally involved comparatively large sums of money.

(Masters' reports for the period show land evaluated at approximately one dollar per acre.) Moneys continually passed in and out of court, through the hands of the registrar or his assistants. The court maintained a detailed accounting system, which was examined at intervals through audit. Financial business was carried on through the Imperial Bank of Canada and, thus, decrees show defendants being directed to pay "the said last mentioned sum into the office in the City of Winnipeg of the Imperial Bank of Canada, between the hours of ten of the clock in the morning and one of the clock in the afternoon."

Three financial volumes remain of the several that must have been created over the twenty-three years of Equity's operations.[34] There are two money ledgers (1879-92 and 1893-95) and a cash book (1883-1902).[35] The former were used to maintain separate accounts belonging to individual actions, while the latter served as a general cash book. Prothonotary Walker described them as "A Ledger in which is [recorded?] all accounts with the Bank" and "A Cash Book in which all moneys ... are entered and which shows the balance in bank every day."[36]

The first money ledger bears no title; a stationer's label indicates that it was purchased from Brown Bros., Toronto, October 22, 1881. The volume (14 x 19 x 4 inches) holds a separate, full-sized index entitled *B.R. In Equity Index To Money Ledger No.1.* The index is arranged by style of cause, or, in infants' cases, by the name of the child concerned. To facilitate searching, a double indexing system has been employed. There are not only twenty-seven alphabet

letter sections, but five vowel subdivisions within each section as well. Styles of cause are entered under each vowel using the second letter of the plaintiff's name as the determiner. If the second letter is a consonant, the entry is taken to the nearest vowel. The "S" section contains the following examples:

A Sayer, Joseph [Infant]
St. Pierre, Martin [Infant]

E Setter vs Morgan
Schultz vs Logan

I Shorey vs Balsillie
Smith, Isabella A. [Infant]

O Scottish Ont. & Man. Land Co. vs Courlee
Smith vs Dudley

U Sutherland vs Thibodeau
St. Germain, Marie Rose [Infant]

As the examples show, difficulties and inconsistencies arose with the use of the double indexing scheme.

Once located, individual accounts are concise and clear. A typical account page is titled, "Annabella McLeod, An Infant, b. 15 Dec. 1868, Equity, No.190." Entry columns include date, transaction, debit, credit, balance, and remarks. This particular account commenced August 4, 1879, and closed February 10, 1890, with the order of Justice Bain:

> I do order that the sum of one hundred 49/100 dollars being the amount shewn by the accountant's certificate to be to the credit of the said applicant be paid out to the said applicant from this Honourable Court. To Cash.

Equity accounts begun in the latter part of the volume, and still continuing, were transferred to Court of Queen's Bench Money Ledger No.2. The first section of this volume accounted for Equity business from January 10, 1893, until June 28, 1895. All accounts remaining open were then transferred to Queen's Bench, Common Law.

The cash book, entitled *Cash*, was maintained as a running account of court debits and credits. Created between July 23, 1883, and February 27, 1902, the volume records Equity, and, later, Queen's Bench transactions. Early pages are headed with the title "Court of Queen's Bench In Equity." The ledger consists entirely of figures; there are no styles of cause.

Administration of Queen's Bench business required a considerable correspondence with officials within and external to the court. Outgoing correspondence was copied into letter books, using a complicated letterpress method.[37] Created under the auspices of the registrar, outgoing correspondence bore the signatures of the prothonotary, deputy prothonotary, clerk of records and writs, clerks of the crown and peace, master in Equity, and registrar in Equity. Addressees of letters were usually department officials or administrative officials of judicial districts and county courts of the province.

Two letter books are extant for the period during which Equity functioned, and a third may be mentioned for its related information.[38] Letters in these books are not exclusive to Equity but reflect outgoing communication generated by all divisions of Queen's Bench.

Letters in the first volume begin November 24,1882, and continue until May 3,1898. The volume itself is in fragile condition, having neither front nor back cover. However, it has received conservation treatment through encasement in protective mylar film. Nearly seven hundred pages of letters pertain to "transmittal of papers, payment of fees, payment of money into court, yearly revenues of the court, court sittings, procedural advice to clerks in Brandon and Portage la Prairie, appointment of Commissioners in B.R., purchase of office supplies, sale of rules of the Court."[39] A number of the letters in this volume are actually reports to the attorney-general regarding business conducted through the prothonotary's office. The statement on page eight, for example, highlights an increase in activity and points out that the "revenue from writs and jury cases alone in 1882 [was] over three times as large as that of 1881." Another statement draws comparisons among the years 1889, 1890, 1891, and 1892. A supplies order, written from "The Prothonotary's Office" in 1894, requests, among other things, "1 Doz. Quik [?] Pens, 1 Doz. extra pen holders, 1 Quire [?] Blot Papers."[40] The last few pages of the volume are letters of a personal nature, concerning business that Prothonotary Walker handled for family and friends.

The third letter book (1899-1909), although beyond the time frame of Equity, illustrates certain points concerning preservation issues. Some of the letters in this and the other volumes are almost indecipherable because letters or whole words are missing. Incorrect application of the letterpress method

resulted in the chemicals burning through the thin onion skin paper of the letter book. The earliest typewritten letters (which appear first in the previous volume, in 1896) are nearly illegible because the ink has faded badly. These letters were at first copied in the same manner as handwritten letters; later they were simply glued into the letter book. A smaller number of incoming letters included in the letter book also received the glue treatment.

Case files were generated throughout the twenty-three years of Equity's operations. They are essentially the core of Equity records, in the sense that the materials contained in any particular case file document the actual events in the course of that case.

A case file may include bill of complaint or petition, answer or demurrer, replication, bills taken pro confesso, affidavits, exhibits, orders and decretal orders, dispositions, bonds, praecipes, motion papers, master's reports, bills of costs, and receipts for goods or money.[41] All of these, of course, are original, but handwritten copies appear in Equity case files as well.

Case files contain many affidavits. Leggo discussed situations where affidavits were required: "There are certain cases in which it is necessary that the bill should be accompanied by an affidavit, to be filed with it, and in which the omission of such accompaniment will render the bill liable to demurrer."[42] When an instrument that should be obtainable at Law was not obtainable, the bill had to be accompanied by an affidavit testifying to this fact. An affidavit was required when the bill was "for the purpose of perpetuating the testimony of

witnesses, where, from circumstances, such as age or infirmity of witnesses, or their intention of leaving the country, it is probable the plaintiff would lose the benefit of their testimony." Bills of interpleader also demanded an affidavit stating that there was no collusion between the parties.[43]

Case files also include numerous praecipes. Early praecipes were penned on sheets of foolscap torn in half; later, brief forms took the place of the foolscap. Contents of a praecipe, even on a torn paper, always maintained a formal structure. A typical example of a praecipe included "In the Queen's Bench, In Equity," the style of cause, a request for a specific document, signature of the judge, and date.

Approximately 7300 case files are contained in 110 boxes, the last six of which hold infants' files.[44] The first six files (recorded in *Register of Pleadings 1*) plus about sixty-five other files are missing, though that accounts for only a small percentage of the total holding. Files are organized in boxes by suit number but arrangement is imperfect and numbering is not always sequential. Plaintiff/defendant files remain in their original pockets, the earliest of which are in very fragile condition. Renumbered infants' files have recently been rehoused in filing folders where they are less subject to degradation through handling. The researcher should be aware that infants' files can not be located according to their original numbers, but must be accessed through their new numbers. (Empty envelopes with names of infant petitioners remain as markers in the boxes.) On the other hand, infants' actions filed after December 31, 1880, were

never renumbered and they occur in the expected order.

Three judges' notebooks complement the records of Court of Queen's Bench, Equity. The notebooks span the years 1877-80 and 1891-92, and thus reflect the earlier and later periods of Equity's functioning. Two of the three notebooks have the added advantage of having been written in a fine penmanship that renders reading the books a pleasure. Notes pertaining to a case may include style of cause, date of hearing, chronological facts of the case, reasoning, decision, and a direction as to which party is to pay the costs.

Chief Justice E.B. Wood and Justice J. Dubuc penned their reasonings in *Judgments 3* and *Judgments 4* (1877-79 and 1879-80). (Spine titles also include "Minute Book," but this can be disregarded.) Both volumes served to record decisions for County Court Selkirk, Queen's Bench, Queen's Bench Chambers, Queen's Bench Equity, and Appeals cases.[45] There are six Equity suits in the two volumes; three of them relate to Métis infants' lands. Reasonings for all the cases are thorough and detailed. This is especially true in relation to the lands actions.

The later period of equitable reasoning is seen in *No.6 General, Mr. Justice Bain, 29th January 1891 to 19th January 1892.* This volume was used to record decisions for Queen's Bench Chambers, Queen's Bench Equity, Appeals, and Portage Assizes. It is indexed by style of cause and includes several Equity suits, though these are not identified in the index. Notes in this volume resemble minutes of proceedings and may include style of cause, date of hearing,

chronological facts of the case, names of counsel, reasoning, and decision.

The judges' notebooks complete a set of Equity records that is remarkable for its wholeness and continuity. *General Index, Equity,* although compiled nearly twenty-five years after inception of the court, provides excellent accessibility to Equity records. There are some errors in the index, but they appear to be few, and some of them have been corrected within the volume. Registers of pleadings are exceptionally well maintained and complete. Minutes of proceedings, unfortunately, are very limited, but decrees compensate for this weakness by furnishing judges' reasonings and decisions. Financial records are not extant before 1879 but money ledgers and a cash book after that date provide a picture of the amounts that were associated with different types of actions and decisions. Letter books reveal the breadth of Equity's influence and, at the same time, the day-to-day personal effort involved in creation of Equity records. Case files are extensive and more than ninety-five percent complete, although their imperfect sequence may require the researcher's perseverance if particular files are desired. Last of all, judges' notebooks show how equitable reasoning was applied during two critical periods of Equity's functioning. The excellent organization of Equity records facilitates access, both physical and intellectual. The comprehensiveness of Equity records makes them meaningful, as sources of particular case information and as resources for historical and other studies. Equity records provide a valuable reflection of justice and society in the early days of Manitoba.

Notes

1. *Statutes of Manitoba*, 1871, c.2, s.3. Clerk is defined as "an officer of the court who keeps records, issues subpoenas and other documents [and acts as] a judge's research assistant." *Canadian Oxford Dictionary* (1998).

2. *Statutes of Manitoba,* 1874, c.12, s.2. At the beginning Manitoba's courts might easily have adopted French procedures. A number of the first lawyers to arrive in the province came from Quebec. During the first court sitting Chief Justice Morris was faced with two conflicting procedures, French and English. He apparently favoured the English, for he wrote to Macdonald, "Fortunately, the legislature here adopted English practice and English law, and I have quietly enforced both, and *have carried with me the French bar."* Gibson and Gibson, 98.

3. The province's first courthouse was located inside the walls of Upper Fort Garry. Chief Justice Morris' court sat in a small wooden structure relocated outside the walls of the fort. The next courthouse, erected on Main Street in 1874, served also as jail and legislature. In 1883 an architecturally designed brick edifice on Kennedy Street became the new seat of Queen's Bench. This served the court's needs until 1894 when an extensive addition was completed. The present Winnipeg Law Courts Building on Broadway opened in 1916. Gibson and Gibson, 24, 32, 109-110, 142, 182, 222.

4. *Statutes of Manitoba*, 1885, c.15, s.55.

5. An affidavit is defined as "a written statement in the name of a person known as the deponent who signs and swears to its veracity; a written statement made or taken under oath before an officer of the court or a notary public or other person who has been duly authorized to certify the statement." Yogis, s.v. "affidavit."

6. Taylor describes all of the English procedures that are to be abrogated with the printing of his book. Taylor and Rae, *General Orders of the Court of Chancery With Notes and Forms,* 1865, AMLJH, PAM.

7. Upper Canada Court of Chancery, *Orders for The Regulation of the Practice and Proceedings of The Court of Chancery of Upper Canada,* 1837, s.33, AMLJH, PAM.

8. Michele Fitzgerald, *A Research Guide To Court Records In the Provincial Archives of Manitoba* (Winnipeg, 1994). For a complete listing of Court of Queen's Bench in Equity records see Appendix A.

9. *General Index, Equity (*G 2410), Court of Queen's Bench, PAM. The "G" number is a location code at Provincial Archives of Manitoba.

10. Yogis, s.v. "pleadings." A civil suit is commenced in today's Court of Queen's Bench with a statement of claim. Family suits are initiated with a petition.

11. William Leggo, *The Practice of the Court of Chancery,* 1: 1.

12. Bill taken "pro confesso" is defined as "In equity practice, an order which the court of chancery makes when the defendant does not file an answer, that the plaintiff may take such a decree as the case made by his bill warrants." Black, s.v. "pro confesso."

13. The study of writing and documents from the past is called "paleography." The study of the forms of documents is known as "diplomatics." Luciana Duranti quotes the definition, "Diplomatics is the discipline which studies the genesis, forms, and transmission of archival documents, and their relationship with the facts represented in them and with their creator, in order to identify, evaluate, and communicate their true nature." Luciana Duranti, "Diplomatics: New Uses for an Old Science," *Archivaria* 28 (Summer 1989), 17, quoting Giorgio Cencetti, "La Preparazione dell' Archivista," *Antalogia di Scritti Archivistici,* ed. Romualdo Giuffrida (Rome, 1985): 285.

14. The paucity of detail does not necessarily indicate laxity on Carey's part for he had a good reputation both during and after his tenure with Equity. It is possible that records were lost or damaged during the moves experienced by the court and, thus, information was not available from those records. (The handwriting of suits 1 to 38 compares with that found on decrees, notated and signed by Daniel Carey. Other handwritings may also be identified from notations and signatures in the decree books.)

15. *Consolidated Statutes of Manitoba,* c.42, s.3.

16. Fitzgerald, "Court Series 3."

17. "Court of Queen's Bench en Banc, i.e., the full court ... acted as an appellate court from the judgment, decision, order or decree of a single judge (County Court, Surrogate Court, Court of Queen's Bench) or verdict of a jury (County

Court, Court of Queen's Bench). It was empowered to 'hear all applications for new trials, all questions or issues of law, all questions or points reserved for the opinion of the court, all appeals or motions in the nature of appeals, all petitions and all other motions in the nature of appeals.'" An Act Respecting the Court of Queen's Bench, *Consolidated Statutes of Manitoba*, 1880, c.31, s.15.

18. Remanets is defined as "A remnant; that which remains. Thus the causes of which the trial is deferred from one term to another, or from one sitting to another, are termed 'remanets.'" Black, s.v. "remanets."

19. En Banc Record Book (GR 727 Box 118 Vol.2), Court of Queen's Bench in Equity, PAM.

20. Leggo, 1: 615. Interlocutory is defined as "Not final. An order or judgment is interlocutory if it does not determine the issues at trial but directs some further proceeding preliminary to a final order or decree. Such order or judgment is subject to change by the court during the pendency of the action to meet the exigencies of the case." Black, s.v. "interlocutory."

21. Leggo, 1: 622.

22. Decree Books A to Q, 1875-98 (G 2520-2536), Court of Queen's Bench in Equity, PAM.

23. The introductory page of volume C is entitled "Decrees and Decretal Orders." A decretal order is defined as "In chancery practice, an order made by the court of chancery, in the nature of a decree, upon a motion or a petition. An order in a chancery suit made on motion or otherwise not at the regular hearing of a cause, and yet not of an interlocutory nature, but finally disposing of the cause, so far as a decree could then have disposed of it." Black, s.v. "decretal order."

24. *Minute Book A* (G 2523), Court of Queen's Bench, PAM.

25. *Decree for Sale Book A* (G 2444), *Decree for Sale Book B* (G 2443), *Decree for Sale Book C* (G 2442), Court of Queen's Bench in Equity, PAM.

26. Wood, Dubuc, and Miller, 101.

27. Ibid., 102.

28. Wood, Dubuc, Miller, 99-101.

29. Ibid., 101.

30. *Foreclosure Book A* (G 2359), *Foreclosure Book B* (G 2360), *Foreclosure Book C* (G 2361), *Foreclosure Book D* (G 2362), *Foreclosure Book E* (G 2363), Court of Queen's Bench in Equity, PAM.

31. Ibid., 98.

32. Redemption is defined as "A right possessed by the mortgagor upon payment of the mortgage to regain legal title to the property. 'This equity of redemption is an estate in land and the person entitled to it is in equity the owner of the land.' Fletcher v. Roden (1882), 1 O.R. 155 at 160 (Ch.D.)." Yogis, s.v. "redemption." Foreclosure is defined as "Generally, the termination of a right to property. When there is a default by a mortgagor in a mortgage agreement, the right to foreclosure arises, but only if there is a forfeiture by a breach of condition. The foreclosure proceeding itself is any proceeding by which the mortgagor's equity of redemption is barred or extinguished beyond the possibility of recall, thus vesting the property absolutely in the mortgagee." Yogis, s.v. "foreclosure."

33. *Praecipe Record Book With Reference A* (G 2005), *Decree Book With Reference B* (G 2445), *Decree Book With Reference C (*G 2446), *Decree Book With Reference D* (G 2447), Court of Queen's Bench in Equity, PAM.

34. As mentioned above, Prothonotary Daniel Carey was hired (1872) on a salary plus "all the fees he collected from litigants, up to a total of 500 pounds." The subject of fees reoccurred three years later, when, about February 10, 1875, the court passed a series of rules numbered 1-17. The fourteenth rule provided a tariff of fees for Equity side of Queen's Bench. Further rules 18-34 were passed November 27, 1880. They applied generally to Law and Equity. A printed copy of these rules, dated 1882, credits the author, "Compiled by G.H. Walker, Prothonotary." Campbell, *Manitoba Bar News*: 1-3.

35. Money Ledger No.1 (G 2696), Money Ledger No.2 (G 2699), *Cash* (G 2702), Court of Queen's Bench, PAM.

36. Walker was responding to an enquiry regarding the practices, procedures, and record keeping systems in use in Manitoba. Geoffrey Walker to Chief Clerk of the Supreme Court of Newfoundland, January 12, 1900, Letter Book (G 2717): 48-51, Court of Queen's Bench in Equity, PAM.

37. See Appendix C, "Directions for Copying Letters, etc." Courtesy archivist Elizabeth Blight, PAM.

38. Letter Book 1882-98 (G 2716), Letter Book 1892-1908 (G 2715), Letter Book 1899-1909 (G 2727), Court of Queen's Bench in Equity, PAM.

39. Fitzgerald, "Court Series 86."

40. The Prothonotary's Office to [?], February 21, 1884, Letter Book (G 2716): 47, Court of Queen's Bench in Equity, PAM.

41. Motion is defined as "An application to a court or judge for a direction or order that something be done that is for the benefit of the applicant. Generally, a motion is made by oral request of counsel in open court." Yogis, s.v. "motion."

42. Leggo, 1: 313-16.

43. Interpleader is defined as "An equitable action in which a debtor, not knowing to whom among his creditors a certain debt is owed, and having no claim or stake in the property in dispute other than its proper disposition, will petition a court to require that creditors litigate the claim among themselves. It is used to avoid double or multiple liability on the part of the creditor." Yogis, s.v. "interpleader."

44. General case files (GR 181) are held in boxes 1-98; infants' files (GR 182) fill boxes 104-110, Court of Queen's Bench in Equity, PAM. Years corresponding to each box are listed in Appendix A.

45. *Judgments 3* (G 2588), *Judgments 4* (G 2589), Court of Queen's Bench in Equity, PAM. *Judgments 2*, used by Chief Justice Wood and Justice McKeagney, served for County Court Selkirk, Queen's Bench, Queen's Bench Chambers, and Appeals from County Courts. *Judgments 1* was not deposited at Provincial Archives, though there is a reference to it in *Judgments 3*.

Conclusion

Manitoba's Court of Queen's Bench In Equity existed and produced records for a period of twenty-three years. Like the Upper Canadian and Nova Scotian Chancery Courts, it owed much to its predecessor, the English Court of Chancery. All four courts originated to answer a fundamental need. All four generated and accumulated records in the service of that need. The differences among the courts derived more from the local application of equity than from any debate as to the necessity for it.

Some observations may be made of Equity records and the circumstances of their creation. As mentioned previously the records are remarkable for their comprehensiveness and their organization. There are, however, some problems with both completeness and arrangement. It is noticeable that materials extant for the years 1872-75 are comparatively scant. The dearth could be attributable to several factors. Creation of the records began early in the province's history when population was not large; the court may have heard few Equity cases. Court record keeping was in its infancy. There may have been less than optimal understanding of the importance of creating and of retaining records. Facilities, equipment, and storage might not have been ideal and, consequently, documents might have been lost or destroyed. The prothonotary, without assistants, may have been unable to attend to all of the tasks requiring his attention. Any of these factors would have

had an impact on the production and retention of early Equity records.

The outward appearance of Equity records is not always a clear indicator of their contents. Registers and ledgers, in particular, frequently lack titles, or carry misleading titles. The problem of deficiency in titling is exacerbated when a register has been employed for more than one type of record. Further complications occur if internal documents are not labeled or are unclear in their arrangement. Doubtless, these faults seemed of little consequence at the time of record creation. However, the impact of such weaknesses would have been felt at the first occasion when a document could not be located. Changes of administrative staff, altered filing systems, and eventual lack of use of materials on a day-to-day basis would eventually make documents difficult to access and comprehend.

Equity documents themselves often display the idiosyncracies of their immediate creators. Handwriting and formatting reveal the tastes and skills of the writers. Spelling and word usage point to the continuing change in spoken and written English. Variations in these elements, at the same time, is constrained by the application of certain standards. Writing is affected by the rules of penmanship while formatting is influenced by forms. Spelling and word usage become standardized through the introduction of printed legal forms. These factors affect both the appearance and the understanding of individual documents.

Some conclusions can be drawn from the study of Equity records and the

circumstances of their creation. The scarcity of the earliest documentation may be attributable to one or more factors. The lack is indicative of the developmental stages of a system, when product may be imperfect and not fully comprehensive. Continuing planning, assessment, and revision are necessary to bring the system to a satisfactory state. Inaccurate titling and obscure arrangement of records represent problems that do not diminish, but increase, with the passage of time. When such records become archival they may require diplomatic analysis in order to render them comprehensible. Unrestrained variation in documents that serve the same purpose may be inefficient in a system that requires extensive production. Standardized forms and formatting improve efficiency and facilitate access, both at the time of creation and in the future.

These conclusions may have applications to the problems posed by new technologies such as electronic records and the Internet. The introduction of the personal computer in the 1980s presented huge challenges to the maintenance and retention of records. There is no doubt that many documents were lost during the initial stages of use of this technology. But continued planning and evaluation of electronic records have produced rudimentary techniques for managing this seemingly ephemeral medium. Paper print-out of word processing documents and electronic mail has been adopted as a retention strategy by many organizations. Sophisticated development of current technology has furnished more stable carriers such as CD-ROMs. However, the

computer industry is still capable of inventing much better solutions to the problems of electronic record keeping and archiving.

The external and internal appearances of electronic containers (diskettes, CD-ROMs, DVD tapes) are just as important as that of paper-based containers (registers, ledgers, case files). Exterior titling is critical, and, for electronic records, should include the physical environment of creation. A diskette, for example, should indicate the broad formatting type (e.g., IBM or Mac), the general application (e.g., spreadsheet), the specific application (e.g., Excel), and the contents title. Rational internal arrangement and exclusive labeling are also vital for efficient access.

Document formatting usually reveals the tastes and skills of the creator. At its best, formatting plays a prime role in making clear the meaning of a document. Good formatting presents an eye-catching and an eye-pleasing product. For court and legal, business, medical, and many other documents, forms and templates are a useful means of standardizing both the appearance and contents of information. This is advantageous when documents are in active use, semi-active use, and, finally, archival use.

The records, no matter in what medium they occur, are always the result of directed activity. An individual document, such as the petition of the Estate of William Inkster, answers a particular purpose. A type of record, such as the decree, serves the functions of a certain court procedure. An aggregate of records, such as the Records of Queen's Bench In Equity, carries out the

mandate and jurisdiction of the creating body. Each kind of record, from the smallest praecipe to the largest index, has its place and its importance.

It is interesting to contemplate the long history of equitable justice. In England, equity began its development within the common law. The necessity for fair treatment under the law was recognized and met by clergy-judges. They included canon law and "God's law" as part of their means of dispensing fair justice. However, the usefulness of their broad jurisdiction was confounded by the intricacies of the writ system. Equity became difficult to obtain as administrative restrictions obstructed the avenue to it. But the need for equity persisted.

A new body emerged. Court of Chancery employed a reinvented writ that better served the requirements of justice. The chancellor had at his disposal the injunction and the decree of specific performance. But Chancery was a court of record. As such, it embraced two aspects, the judicial, and the administrative. Like Common Law before it, Chancery eventually succumbed to rigidity of precedent on the judicial side, and proliferation of paperwork on the administrative side. Still the need for equity persisted.

Reforms were needed in order for equitable justice to prevail. In England the Judicature Acts created a new streamlined Supreme Court of Judicature with jurisdiction over both law and equity. In Manitoba the Queen's Bench Act amalgamated Common Law and Equity into a new Court of Queen's Bench. Separated administrations were drawn together into one, and the restructured

court was mandated with jurisdiction over both law and equity. Access to fair justice was regained. Today, the necessity for equity persists.

Appendix A

Records of Court of Queen's Bench in Equity, 1872-1895

The following information is taken from Michele Fitzgerald, *A Research Guide to Court Records in the Provincial Archives of Manitoba.*

TITLE	DATES	PAM#
Index:		
General Index, Equity	1872-1895	G 2410
Registers of Pleadings:		
[Register of Pleadings 1] (cases 1-667)	1872-1882	G 2537
Register of Pleadings [2] (668-1680)	1882-1884	G 2538
Register of Pleadings 3 (1681-2519)	1885-1887	G 2539
Register of Pleadings 4 (2520-6170)	1885-1887	G 2540
Register of Pleadings 5 (6171-7164)	1887-1890	G 2541
Register of Pleadings 6 (7165-8054)	1890-1894	G 2542
Register of Pleadings 7 (8055-8254)	1894-1902	G 2543
Minutes of Proceedings:		
No.4, Registrar in Equity	1894-1895	G 2635
Court of Queen's Bench, Manitoba, Term Book, [?]6 Victoria To ... (Chambers and En Banc Record Book; related minutes of proceedings)	1872-1874; 1883-1888	G 2632
"From [October 15] '88 to Dec.23, '97" (En Banc Record Book; related minutes of proceedings)	1888-1897	GR 727 Box 118 Vol.2
Decrees:		
Orders in Equity B	1875-1881	G 2522
Index To Book C	[1875-1879]	G 2521
Decrees in Equity C	1875-1879	G 2520
Minute Book A (Decrees)	1880-1882	G 2523
Record of Decrees E	1882-1884	G 2524
Record of Decrees F	1884-1884	G 2525
Record of Decrees G	1884-1885	G 2526
Record of Decrees H	1885-1885	G 2527
Record of Decrees I	1885-1886	G 2528

Record of Decrees J	1886-1886	G 2529
Record of Decrees K	1886-1887	G 2530
Record of Decrees L	1887-1888	G 2531
Record of Decrees M	1888-1890	G 2532
Record of Decrees N	1890-1892	G 2533
Record of Decrees O	1892-1894	G 2534
Record of Decrees P	1894-1898	G 2535
Record of Decrees Q	1895-1898	G 2536
Decrees for Sale:		
Decrees for Sale Book A	1882-1883	G 2444
Decrees for Sale Book B	1884-1885	G 2443
Decrees for Sale Book C	1886-1887	G 2442
Decrees for Foreclosure:		
Foreclosure Book A	1881-1883	G 2539
Foreclosure Book B	1884-1886	G 2360
Foreclosure Book C	1886-1889	G 2361
Foreclosure Book D	1886-1889	G 2362
Foreclosure Book E	1886-1889	G 2363
Decrees with Reference:		
Praecipe Record Book With Reference A	1882-1884	G 2005
Decree Book With Reference B	1884-1884	G 2445
Decree Book With Reference C	1884-1886	G 2446
Decree Book With Reference D	1886-1895	G 2447
Money/Cash Books:		
[Money Ledger No.1]	1879-1892	G 2696
Money Ledger No.2	1892-1902	G 2699
Cash	1883-1902	G 2702
Administrative Correspondence: (not exclusive to Equity)		
Letter Book	1882-1898	G 2716
Letter Book	1892-1908	G 2715
Letter Book	1899-1909	G 2727
Judges' Notebooks: (not exclusive to Equity)		
Judgments 3	1877-1879	G 2588
Judgments 4	1879-1880	G 2589
No.6, General, Mr. Justice Bain	1891-1892	G 2625

Case Files: (* indicates files not in sequential order)

Case files 7-168	187[2]-1879	GR 181 Box 1
Case files 163-349*	1879-1880	GR 181 Box 1
Case files 171-200*	1879-1879	GR 181 Box 108
Case files 201-349*	1881-1882	GR 181 Box 2
Case files 258-271*	1879-1879	GR 181 Box 108
Case files 340-439*	1881-1881	GR 181 Box 3
Case files 352-424*	1880-1881	GR 181 Box 108
Case files 439A-461	1881-1881	GR 181 Box 4
Case files 464-515	1881-1881	GR 181 Box 5
Case files 516.5-574	1881-1882	GR 181 Box 6
Case files 575-618	1882-1882	GR 181 Box 7
Case files 619-696	1882-1882	GR 181 Box 8
Case files 698-744	1882-1882	GR 181 Box 9
Case files 750-795	1882-1882	GR 181 Box 10
Case files 802-864	1882-1883	GR 181 Box 11
Case files 867-904	1883-1883	GR 181 Box 12
Case files 905-936	1883-1883	GR 181 Box 13
Case files 937-997	1883-1883	GR 181 Box 14
Case files 1001-1064	1883-1883	GR 181 Box 15
Case files 1065-1125	1883-1883	GR 181 Box 16
Case files 1128-1188	1883-1883	GR 181 Box 17
Case files 1189-1227	1883-1883	GR 181 Box 18
Case files 1230-1274	1883-1883	GR 181 Box 19
Case files 1275-1322	1883-1883	GR 181 Box 20
Case files 1323-1366	1883-1883	GR 181 Box 21
Case files 1367-1408	1883-1883	GR 181 Box 22
Case files 1409-1447	1883-1883	GR 181 Box 23
Case files 1450-1494	1883-1883	GR 181 Box 24
Case files 1497-1534	1883-1883	GR 181 Box 25
Case files 1539-1599*	1883-1884	GR 181 Box 26
Case files 1542-1552*	1883-1883	GR 181 Box 109
Case files 1600-1652	1884-1884	GR 181 Box 27
Case files 1653-1720	1884-1884	GR 181 Box 28
Case files 1709-1714	1884-1884	GR 181 Box 109
Case files 1721-1772	1884-1884	GR 181 Box 29
Case files 1773-1829	1884-1884	GR 181 Box 30
Case files 1832-1882	1884-1884	GR 181 Box 31
Case files 1883-1898*	1884-1884	GR 181 Box 32
Case files 1884-1899*	1884-1884	GR 181 Box 109
Case files 1902-1951	1884-1884	GR 181 Box 33
Case files 1952-2006	1884-1884	GR 181 Box 34
Case files 2008-2031	1884-1884	GR 181 Box 35

Case files 2034-2079	1884-1884	GR 181 Box 36
Case files 2080-2143	1884-1884	GR 181 Box 37
Case files 2144-2189	1884-1884	GR 181 Box 38
Case files 2190-2231	1884-1884	GR 181 Box 39
Case files 2232-2266	1884-1884	GR 181 Box 40
Case files 2267-2314	1884-1884	GR 181 Box 41
Case files 2315-2369	1884-1885	GR 181 Box 42
Case files 2370-2422	1885-1885	GR 181 Box 43
Case files 2428-2465	1885-1885	GR 181 Box 44
Case files 2466-2521	1885-1885	GR 181 Box 45
Case files 2522-2572	1885-1885	GR 181 Box 46
Case files 2573-2618	1885-1885	GR 181 Box 47
Case files 2619-2660	1885-1885	GR 181 Box 48
Case files 2661-2690	1885-1885	GR 181 Box 49
Case files 2691-2742	1885-1885	GR 181 Box 50
Case files 2743-2775	1885-1885	GR 181 Box 51
Case files 2776-2837	1885-1885	GR 181 Box 52
Case files 2838-2883	1885-1885	GR 181 Box 53
Case files 2885-2933	1885-1885	GR 181 Box 54
Case files 2934-2989	1885-1886	GR 181 Box 55
Case files 2990-3027	1886-1886	GR 181 Box 56
Case files 3028-3073	1886-1886	GR 181 Box 57
Case files 3074-4057*	1886-1886	GR 181 Box 58
Case files 4039-4042*	1886-1886	GR 181 Box 109
Case files 4058-5015	1886-1886	GR 181 Box 59
Case files 5016-5067	1886-1886	GR 181 Box 60
Case files 5068-6027*	1886-1886	GR 181 Box 61
Case files 5431*-	1886-1886	GR 181 Box 109
Case files 6028-6075	1886-1886	GR 181 Box 62
Case files 6076-6144	1886-1886	GR 181 Box 63
Case files 6149-6213	1886-1887	GR 181 Box 64
Case files 6214-6266	1887-1887	GR 181 Box 65
Case files 6268-6328	1887-1887	GR 181 Box 66
Case files 6329-6380	1887-1887	GR 181 Box 67
Case files 6382-6430	1887-1887	GR 181 Box 68
Case files 6431-6498	1887-1887	GR 181 Box 69
Case files 6499-6577	1887-1888	GR 181 Box 70
Case files 6578-6651	1888-1888	GR 181 Box 71
Case files 6652-6719	1888-1888	GR 181 Box 72
Case files 6723-6778	1888-1888	GR 181 Box 73
Case files 6780-6832	1888-1888	GR 181 Box 74
Case files 6833-6861	1889-1889	GR 181 Box 75
Case files 6862-6934	1889-1889	GR 181 Box 76

Case files 6935-7015	1889-1889	GR 181 Box 77
Case files 7016-7086	1889-1890	GR 181 Box 78
Case files 7087-7184*	1890-1890	GR 181 Box 79
Case files 7152*-	1890-1890	GR 181 Box 110
Case files 7185-7272	1890-1890	GR 181 Box 80
Case files 7273-7309	1890-1891	GR 181 Box 81
Case files 7310-7353	1891-1891	GR 181 Box 82
Case files 7354-7410	1891-1891	GR 181 Box 83
Case files 7411-7448	1891-1891	GR 181 Box 84
Case files 7449-7489*	1891-1891	GR 181 Box 85
Case files 7476*-	1891-1891	GR 181 Box 110
Case files 7490-7521	1891-1891	GR 181 Box 86
Case files 7522-7564	1891-1892	GR 181 Box 87
Case files 7565-7599	1892-1892	GR 181 Box 88
Case files 7600-7630	1892-1892	GR 181 Box 89
Case files 7631-	1892-1892	GR 181 Box 110
Case files 7631-7647	1892-1892	GR 181 Box 90
Case files 7648-7685	1892-1892	GR 181 Box 91
Case files 7686-7736	1892-1892	GR 181 Box 92
Case files 7737-7770	1892-1893	GR 181 Box 93
Case files 7771-7810	1893-1893	GR 181 Box 94
Case files 7811-7850	1893-1893	GR 181 Box 95
Case files 7851-7856	1893-1893	GR 181 Box 96
Case files 7857-7908	1893-1893	GR 181 Box 97
Case files 7909-7962*	1893-1894	GR 181 Box 98

Case Files, Infants:

Case files 1-59	GR 182 Box 104
Case files 60-96	GR 182 Box 105
Case files 97-118	GR 182 Box 106
Case files 119-147	GR 182 Box 107

Appendix B

Court of Queen's Bench Personnel, 1872-1895

The following information is taken from *Manitoba Public Accounts* (1873-1895), Legislative Library of Manitoba, and from *Court of Queen's Bench, Manitoba, Term Book, [?]6 Victoria To ....*

1872
Alexander Morris - Chief Justice
Daniel Carey - Prothonotary

Year ending December 31, 1873.
J.C. McKeagney - Puisne Justice
Louis Bétournay - Puisne Justice
Daniel Carey - Prothonotary
F.J. Clark[e] - Services as Assistant Clerk
J.H. Bell - Services as Reporter
P.B. Douglas - Services as Reporter

Half-year ending June 30, 1874.
E.B. Wood - Chief Justice
J.C. McKeagney - Puisne Justice
Louis Bétournay - Puisne Justice
Daniel Carey - Prothonotary
F.J. Clarke - Services at Court of Queen's Bench

Year ending June 30, 1875.
E.B. Wood - Chief Justice
J.C. McKeagney - Puisne Justice
Louis Bétournay - Puisne Justice
Daniel Carey - Prothonotary
F.J. Clarke - Services as Assistant Clerk; Clerk
O. Labrie - Services as Assistant Clerk

Eighteen months, July 1, 1875 to December 31, 1876.
E.B. Wood - Chief Justice
J.C. McKeagney - Puisne Justice
Louis Bétournay - Puisne Justice
Daniel Carey - Prothonotary
A.O. Gar[n]ot - Assistant Clerk and in Prothonotary's office.

Year ending December 31, 1877.

E.B. Wood - Chief Justice
J.C. McKeagney - Puisne Justice
Louis Bétournay - Puisne Justice
Daniel Carey - Prothonotary
A.O. Gar[n]ot - Assistant Clerk Prothonotary's office
John Holland - Assistant Clerk Prothonotary's office
E. Marston - Assistant Clerk Prothonotary's office

Year ending December 31, 1878.

E.B. Wood - Chief Justice
J.C. McKeagney - Puisne Justice
Louis Bétournay - Puisne Justice
Daniel Carey - Prothonotary
Allan Macdonald - Prothonotary
Ed. Marston - Deputy Prothonotary
W.J. Kittson - Assistant Clerk Prothonotary's office
D. Macgillivray - Assistant Clerk Prothonotary's office

Year ending December 31, 1879.

E.B. Wood - Chief Justice
Joseph Dubuc - Puisne Justice
Allan Macdonald - Prothonotary
W.J. Kittson - Assistant Prothonotary
Geoffrey H. Walker - Services in Prothonotary's office
A.O. Garnot - Services in Court

Year ending December 31, 1880.

E.B. Wood - Chief Justice
Joseph Dubuc - Puisne Justice
James A. Miller - Puisne Justice
Allan Macdonald - Prothonotary
W.J. Kittson - Assistant Prothonotary
Geoffrey H. Walker - Entering decrees
A.O. Garnot - Services in Court
Wm. Coldwell - Reporting trials

Year ending December 31, 1881.

E.B. Wood - Chief Justice
Joseph Dubuc - Puisne Justice
James A. Miller - Puisne Justice
Wm. Leggo - Clerk; Master in Chancery
R.H. Leggo - Work in Chancery office

L.N. Bétournay - Work in Chancery office
D. McGillivray - Work in Chancery office
Allan Macdonald - Prothonotary
Geoffrey H. Walker - Prothonotary
W.J. Kittson - Deputy Prothonotary
E.W. Smith - Clerk, Prothonotary's office
Ed. Marston - Extra work in office
O. Garneau - Services in Prothonotary's office
S.A. Bétournay - Services copying
Louis Gagnon - Services copying and in court

Year ending December 31, 1882.

E.B. Wood - Chief Justice
Joseph Dubuc - Puisne Justice
James A. Miller - Puisne Justice
W. Leggo - Master in Chancery
F. Leggo - Extra Clerk
R.H. Leggo - Extra Clerk
T.W. Leggo - Extra Clerk
J. Cape - Equity Records
Geoffrey H. Walker - Prothonotary
W.H. Kittson - Deputy Prothonotary
A.O. Garnot - Extra Clerk
William Perkins - Stenographer
W. Coldwell - Stenographer

Year ending December 31, 1883.

Lewis Wallbridge - Chief Justice
Joseph Dubuc - Puisne Justice
T.W. Taylor - Puisne Justice
Wm. Leggo - Master in Chancery
A. Lemon - Registrar in Equity
F. Leggo - Extra Clerk to Master in Chancery
T.W. Leggo - Extra Clerk to Master in Chancery
H.A.L. Dundas - Accountant
Geoffrey H. Walker - Prothonotary
W. Kittson - Deputy Prothonotary
A. Mills - Extra Clerk to Prothonotary; Deputy Prothonotary
A.O. Garneau - Extra Clerk to Prothonotary
H.S. Sherwood - Extra Clerk to Prothonotary
C.L. Shaw - Extra Clerk to Prothonotary
J.P. Prud'homme - Extra Clerk to Prothonotary
T.J. Tait - Extra Clerk to Prothonotary

J.H. Inkster - Extra Clerk to Queen's Bench office
C. Griffith - Extra Clerk
H. Ransom - Copying bills for judges
W. Perkins - Stenographer
W. Coldwell - Extra Stenographer
J. Perkins - Extra Stenographer
A. Jardine - Extra Stenographer

Year ending December 31, 1884.

Lewis Wallbridge - Chief Justice
Joseph Dubuc - Puisne Justice
T.W. Taylor - Puisne Justice
Robert H. Smith - Puisne Justice
William Leggo - Master in Chancery
A. Lemon - Registrar in Equity
H.A.L. Dundas - Accountant
J.H. Inkster - Clerk
J.A.W. Innes - Clerk
Geoffrey H. Walker - Prothonotary
Augustus Mills - Deputy Prothonotary
H.S. Sherwood - First Clerk
T.J. Tait - Second Clerk
J.P. Prud'homme - Second Clerk
G.A. Bétournay - Clerk in Chambers
E. Marston - Registrar, Surrogate Court
W. Perkins - First Reporter
J. Perkins - Second Reporter
W. Coldwell - Third Reporter

Half-year ending June 30, 1885.

Lewis Wallbridge - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice
Wm. Leggo - Master and Referee
A. Lemon - Registrar and Clerk of Records and Writs
H.A.L. Dundas - Accountant
J.A.W. Innes - Clerk
W.G. Eddy - Equity Clerk
Geoffrey H. Walker - Prothonotary and Clerk of Crown and Pleas
Augustus Mills - Deputy Prothonotary
H.S. Sherwood - Record Clerk
T.S. Tait - Entry Clerk
G.A. Bétournay - Chamber Clerk

W. Perkins - First Court Reporter
James Perkins - Second Reporter

Year ending June 30, 1886.
Lewis Wallbridge - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice
P.A. Macdonald - Master and Referee
A. Lemon - Registrar in Equity
H.A.L. Dundas - Accountant
J.A.W. Innes - Clerk
W.G. Eddy - Equity Clerk
Geoffrey H. Walker - Prothonotary and Clerk of Crown and Pleas
Augustus Mills - Deputy Prothonotary
E. Marston - Registrar for Province and Clerk Eastern Judicial Dist.
H.S. Sherwood - Record Clerk
T.J. Tait - Entry Clerk
G.A. Bétournay - Chamber Clerk
Wm. Perkins - First Court Reporter
James Perkins - Second Court Reporter

Year ending June 30, 1887.
Lewis Wallbridge - Chief Justice
T.W. Taylor - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice
J.F. Bain - Puisne Justice
P.A. Macdonald - Master and Referee
A. Lemon - Registrar and Clerk of Records and Writs
H.A.L. Dundas - Accountant and Clerk
W.G. Eddy - Clerk in Equity office
Geoffrey H. Walker - Prothonotary and Clerk of Crown and Pleas
Augustus Mills - Deputy Prothonotary
E. Marston - Registrar for Province and Clerk Eastern Judicial Dist.
H.S. Sherwood - Common Law Clerk
T.S. Tait - Common Law Clerk
G.A. Bétournay - Common Law Clerk
Wm. Perkins - First Court Reporter
James Perkins - Second Court Reporter

Half-year ending December 31, 1888.
T.W. Taylor - Chief Justice
Joseph Dubuc - Puisne Justice

A.C. Killam - Puisne Justice
J.F. Bain - Puisne Justice
P.A. Macdonald - Master and Referee
Augustus Lemon - Registrar in Equity
J.A.W. Innes - Deputy Clerk of Records and Writs
Geoffrey H. Walker - Prothonotary
Augustus Mills - Deputy Prothonotary
Wm. Perkins - Court Reporter
James Perkins - Court Reporter

For the year 1889.
T.W. Taylor - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice
J.F. Bain - Puisne Justice
P.A. Macdonald - Master and Referee
Andrew Lemon - Registrar
J.A.W. Innes - Deputy Clerk of Records and Writs and Accountant
Geoffrey H. Walker - Prothonotary
A. Mills - Deputy Prothonotary
H.S. Sherwood - Chamber Clerk
Wm. Perkins - Court Reporter
James Perkins - Court Reporter

Year ending December 31, 1890.
T.W. Taylor - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice
J.F. Bain - Puisne Justice
P.A. Macdonald - Master and Referee
Augustus Lemon - Registrar
J.A.W. Innes - Deputy Clerk of Records and Writs
Geoffrey H. Walker - Prothonotary
Augustus Mills - Deputy Prothonotary
H.S. Sherwood - Chamber Clerk
Wm. Perkins - First Court Reporter
James Perkins - Second Court Reporter

Year ending December 31, 1891.
T.W. Taylor - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice
J.F. Bain - Puisne Justice

P.A. Macdonald - Master and Referee
Augustus Lemon - Registrar
J.A.W. Innes - Deputy Clerk of Records and Writs and Accountant
John Y. Cain - Deputy Clerk of Records and Writs and Accountant
Geoffrey H. Walker - Prothonotary
Augustus Mills - Deputy Prothonotary
H.S. Sherwood - Chamber Clerk
A.J. Belch - Chamber Clerk
Wm. Perkins - First Court Reporter
James Perkins - Second Court Reporter

Year ending December 31, 1892.
T.W. Taylor - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice
J.F. Bain - Puisne Justice
P.A. Macdonald - Master and Referee
R.J. Wilson - Registrar
J.Y. Cain - Deputy Clerk of Records and Writs
Geoffrey H. Walker - Prothonotary
Augustus Mills - Deputy Prothonotary
H.S. Sherwood - Chamber Clerk
Wm. Perkins - First Court Reporter
James Perkins - Second Court Reporter

Year ending December 31, 1893.
T.W. Taylor - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice
J.F. Bain - Puisne Justice
P.A. Macdonald - Master and Referee
Robert J. Wilson - Registrar
John Y. Cain - Deputy Clerk of Records and Writs and Accountant
Geoffrey H. Walker - Prothonotary
Augustus Mills - Deputy Prothonotary
A.J. Belch - Chamber Clerk
Wm. Perkins - First Court Reporter
James Perkins - Second Court Reporter

Year ending December 31, 1894.
T.W. Taylor - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice

J.F. Bain - Puisne Justice
P.A. Macdonald - Master and Referee
Robert J. Wilson - Registrar
John Y. Cain - Deputy Clerk of Records and Writs and Accountant
Geoffrey H. Walker - Prothonotary
Augustus Mills - Deputy Prothonotary
A.J. Belch - Chamber Clerk
Wm. Perkins - First Court Reporter
James Perkins - Second Court Reporter

Year ending December 31, 1895.
T.W. Taylor - Chief Justice
Joseph Dubuc - Puisne Justice
A.C. Killam - Puisne Justice
J.F. Bain - Puisne Justice
P.A. Macdonald - Master and Referee
Robert J. Wilson - Registrar
J.Y. Cain - Deputy Clerk of Records and Writs and Accountant
Geoffrey H. Walker - Prothonotary
A. Mills - Deputy Prothonotary
A.J. Belch - Chamber Clerk
Wm. Perkins - First Court Reporter
James Perkins - Second Court Reporter

Court of Queen's Bench also employed, during 1872-95, a number of persons as interpreters and criers. In addition the attorney-general's office maintained a separate staff, usually including a chief law clerk, one or two clerks, and an accountant.

Appendix C

Directions For Copying Letters

The following information has been kindly supplied by archivist, Elizabeth Blight, Provincial Archives of Manitoba.

Having opened the Copying Book in the place in which it is intended to copy the Letters, lay an oiled sheet on the left-hand page, turn the first blank page on to the oiled sheet, and wet it with the damping brush, (taking care to cover the whole surface), and lay a drying sheet upon it; repeat this operation until a sufficient number of pages are damped to receive the letters required to be copied, then lay an oiled sheet upon the last drying sheet, place the Copying Book in the press and subject it to a slight pressure, in order to diffuse the moisture equally through the body of the paper, and to absorb any excess on the surface; remove the Copying Book from the Press, open it backwards, take out the last of the drying sheets, lay the letter to be copied face downwards on the copying paper, and turn over together the oiled sheet, leaf of copying paper, and letter, taking care not to displace the letter; repeat this procedure with each letter, return the Book to the Press, apply a moderate pressure for about a minute, and the letters will be copied.

The letter to be copied must not be blotted up, or imperfect copies will be produced.

The Screw of the Press should be occasionally cleaned and oiled, as if dirt be allowed to accumulate and harden, the Press will work with difficulty, and a fracture may occur.

(Extracted from inside front cover of Victoria Land Letterbook, book manufactured by "WATERLOW AND SONS Limited ... and Finsbury Stationary Works, London: Manufacturing Stationers, Printers, and Engravers [ca. 1875].")

Bibliography

PRIMARY SOURCES

Archibald, Adams G. Papers. Provincial Archives of Manitoba.

Consolidated Statutes of Manitoba, 1880, c.31.

Court of Queen's Bench in Equity, Manitoba, 1872-95. Records. Provincial Archives of Manitoba.

District of Assiniboia, 1835-1869. Records. Provincial Archives of Manitoba.

Manitoba Act. *Statutes of Canada,* 1870, c.3.

Manitoba Public Accounts, 1875, 1876, 1882, 1884. Legislative Library of Manitoba.

Morris, Alexander. Papers. Provincial Archives of Manitoba.

Revised Statutes of Canada, 1906, c.129.

Statutes of Manitoba, 1871, c.2; 1872, c.3; 1873, c.4; 1874, c.2; 1881, c.16, 28; 1884, c.18; 1885, c.6, 15, 36; 1886, c.14; 1893, c.7; 1895, c.6.

Supreme Court Act. *Statutes of Manitoba,* 1871, c.2.

United Kingdom. Rupert's Land Act. *Statutes,* 31-32 Victoria, c.105.

SECONDARY SOURCES

Ambler, R.W. "Enrolled Trust Deeds --- A Source for the History of Nineteenth-Century Conformity." *Archives* 20, no.90 (1993).

"Archive of Manitoba Legal-Judicial History." *Consultant's Report* (1991).

Auerbach, Jerold S. "Lawyers' Papers as a Source of Legal History." Part 1. *Law Library Journal* 69 (1976).

Bailey, Catherine. "Archival Theory and Electronic Records." *Archivaria* 27 (1989-90).

Baker, J. H. *An Introduction to English Legal History.* London: Butterworths, 1971.

Baker, J. H. *An Introduction to English Legal History,* 3rd ed. London: Butterworths, 1990.

Bearman, David A. and Richard H. Lytle. "The Power of the Principle of Provenance." *Archivaria* 21 (winter 1986-86).

Bellan, R.C. *The Development of Winnipeg As A Metropolitan Centre.* Ph.D. thesis, Columbia University, 1958.

Bindon, Kathryn M. "Adam Thom." *Dictionary of Canadian Biography* 11 (1982).

Black, Henry Campbell. *Black's Law Dictionary,* 6th ed. St. Paul, Minn.: West Publishing Company, 1990.

Boudreau, Michael. Review of *Essays in the History of Canadian Law, Vol.5: Crime and Criminal Justice*, ed. Jim Phillips, Tina Loo, Susan Lewthwaite. Toronto: University of Toronto Press, 1994. *Archivaria* 38 (fall 1994).

Bowsfield, Hartwell. "John Black." *Dictionary of Canadian Biography* 11 (1982).

Brawn, Dale. *Manitoba Litigants And Their Lawsuits, 1909-1939; Quantitative Patterns and Results.* MA thesis, University of Manitoba, 1995.

Bucknall, Brian. "The Archivist, the Lawyer, the Clients and Their Files." *Archivaria* 33 (winter 1991-92).

Cahill, Barry. "Bleak House Revisited: The Records and Papers of the Court of Chancery in Nova Scotia, 1751-1855." *Archivaria* 29 (1989-90).

Campbell, A.C. *Manitoba Bar News* (February 1930). Archive of Manitoba Legal-Judicial History, Provincial Archives of Manitoba.

Canadian Society for Legal History. *Proceedings, 1977: The Canadian Society for Legal History.* Toronto: The Society, 1977.

Carey, Daniel. *Judgments in the Queen's Bench Manitoba: Reported by Daniel Carey, Clerk of the Crown and Pleas* (Winnipeg, 1875). Archive of Manitoba Legal-Judicial History, PAM.

Clanchy, M. T. *From Memory to Written Record, England 1066-1307.* Cambridge, Massachusettes: Harvard University Press, 1979.

Clanchy, M.T. *From Memory to Written Record.* Quoting J.C. Robertson and J.B. Shephard, ed., *Materials for the History of Thomas Beckett,* Rolls Series LXXII (1875-85).

Clanchy, M.T. "'Tenacious Letters': Archives and Memory in the Middle Ages." *Archivaria* 11 (winter 1980-81).

Connor, Seymour V. "Legal Materials As Sources of History." *The American Archivist* 23, no.1 (1960).

Cook, Terry. "Archives and the Law." *Archivaria* 18 (summer 1984).

Cook, Terry. "Easy to Byte, Harder to Chew: The Second Generation of Electronic Records Archives." *Archivaria* 33 (winter 1991-92).

Cook, Terry. "From Information to Knowledge: An Intellectual Paradigm for Archives." *Archivaria* 19 (winter 1984-85).

Consolidated Statutes for Upper Canada 1859, c.12. Quoted in C.J. Shepard, "Court Records as Archival Records." *Archivaria* 18 (summer 1984).

Cook, Terry. "Paper Trails: A Study in Northern Records and Northern Administration, 1898-1958." In *Canadian Archival Studies:* 269. Quoting Graham S. Lowe, "'The Enormous File': The Evolution of the Modern Office in Early Twentieth-Century Canada." *Archivaria* 19 (winter 1984): 291s.

Curzon, L.B. *Equity,* 3rd ed. London: Macdonald and Evans Limited, 1974.

Dryden, Jean E. "Archival Description of Electronic Records: An Examination of Current Practices." *Archivaria* 38 (fall 1994).

Duff, Wendy. "Will Metadata Replace Archival Description? A Commentary." *Archivaria* 39 (spring 1995).

Dumbald, Edward. "Legal Records in English and American Courts." *The American Archivist* (January 1973).

Duranti, Luciana. "Diplomatics: New Uses for an Old Science." Parts 1-6. *Archivaria* 28 (summer 1989) through *Archivaria* 33 (winter 1991-92).

English, Christopher. "Newfoundland's Early Laws and Legal Institutions: from Fishing Admirals to the Supreme Court of Judicature in 1791-1792." *Manitoba Law Journal* 23, no.1 (1996).

Everton, Ann R. *What Is Equity About?* London: Butterworths, 1970.

Ewart, John S. "The Judicature Act." *Manitoba Law Journal* 1, no.3 (1884).

Fitzgerald, Michele. *A Research Guide to Court Records in the Provincial Archives of Manitoba.* Winnipeg, 1994.

Foster, Hamar. "British Columbia: Legal Institutions in the Far West, from Contact to 1871." *Manitoba Law Journal* 23, no.1 (1996).

Frank, W.F. *The General Principles of English Law.* London: George G. Harrup and Company Limited, 1971.

Friesen, Gerald. *The Canadian Prairies, A History.* Toronto and London: University of Toronto Press, 1987.

Friesen, Gerald and Barry Potyondi. *A Guide to the Study of Manitoba History.* Winnipeg: University of Manitoba Press for the Manitoba Historical Society, 1981.

Friesen, Jean. "Alexander Morris." *Dictionary of Canadian Biography* (1976).

Gall, Gerald L. *The Canadian Legal System,* 3rd ed. Toronto: Carswell, 1990.

Gersack, Dorothy Hill. "Colonial, State, and Federal Court Records: A Survey." *The American Archivist* (1973).

Gibson, Dale, and Lee Gibson. *Substantial Justice: Law and Lawyers in Manitoba, 1670-1970.* Winnipeg: Peguis Publishers, 1972.

Gourlie, Michael. "The Records of Lawyers: Archival Appraisal and Access." MA thesis, University of British Columbia, 1994.

Granatstein, J.L. et al. *Twentieth Century Canada,* 2nd ed. Toronto: McGraw-Hill Ryerson Limited, 1983.

Great Britain. Committe on Legal Records. *Report of the Committee on Legal Records.* London: Her Majesty's Stationery Office, 1966.

Great Britain. Court of Chancery. *Lord Nottingham's Chancery Cases,* edited with an introduction by D.E.C. Yale. Vols. 73, 79. London: B. Quaritch, publications of the Selden Society, 1957-1961.

Greenwood, Murray. "Lower Canada (Quebec): Transformation of Civil Law, from Higher Morality to Autonomous Will, 1774-1886." *Manitoba Law Journal* 23, no.1 (1996).

Guth, DeLloyd. "Managing the Paper After Closing the File; Support Staff Workshop." Winnipeg: Law Society of Manitoba, 1996.

Guth, DeLloyd. "Réflexions sur les archives judiciaires de l'ouest du Canada." *Archives* 22 (1991).

Guy, J.A. *Christopher St. German on Chancery and Statute Law.* London: Selden Society, 1985.

Hamilton, C.E. *Annual Report of the Attorney-General's Department for the Year 1885. Sessional Papers,* no.2. Legislative Library of Manitoba.

Hay, Douglas. "Archival Research in the History of the Law: A User's Perspective." *Archivaria* 24 (summer 1987).

Heywood, Heather. "Appraising Legal Value in Records." MA thesis, University of British Columbia, 1990.

Hindus, Michael. "Designing Projects for Maximum Impact: Saving the Early Court Records in Massachusetts." *The American Archivist* 42, no.3 (1979).

Hodgins, Bruce. "Lewis Wallbridge." *Dictionary of Canadian Biography* (1982).

Hopkins, Mark. "Records and Records Keepers Judicially Considered: Credibility or Convenience?" *Archivaria* 18 (summer 1984).

Jacob, I.H. "Later Legal Records and the Historian." *Archives, The Journal of the British Records Association* 6, no.31 (1964).

Jenkinson, Hilary Sir. "Archives and the Science and Study of Diplomatic." In *Selected Writings of Sir Hilary Jenkinson.* Gloucester: Alan Sutton Publishing Limited, 1980, in collaboration with The Society of Archivists.

Jenkinson, Hilary Sir. "Palaeography and the Practical Study of Court Hand." In *Selected Writings of Sir Hilary Jenkinson.* Gloucester: Alan Sutton Publishing Limited, 1980, in collaboration with The Society of Archivists.

Jones, W. J. *The Elizabethan Courts of Chancery.* Great Britain: Oxford University Press, 1967.

Jordan, Philip D. "In Search of Legal Records." *The American Archivist* 33, no.4 (1970).

Kates, Christine. "The Osgoode Society: Preservation of Legal Records." *The Law Society Gazette* (1987).

Keeton, G. W. *An Introduction To Equity.* London: Sir Isaac Pitman and Sons, Limited, 1965.

Klumpenhouwer, Richard. "Archive of Manitoba Legal History." *Consultant's Report* (January 1991).

Knafla, Louis A. "'Be It Remembered': Court Records and Research in the Canadian Provinces." *Archivaria* 18 (1984).

Konefsky, Alfred. "Lawyers' Papers As a Source of Legal History." Part 2. *Law Library Journal* 69 (1976).

Laskin, Bora. *The British Tradition in Canadian Law.* London: Stevens and Sons, 1969.

"Laws of Assiniboia," *Consolidated Statutes of Manitoba* (1880). Quoted in Read, Frederick. "Early History of the Manitoba Courts." *Manitoba Bar News* 10, no.2 (October 1937).

The Legal Archives Society of Alberta: Annual Report 1992-93 (Calgary, 1993).

Leggo, William. *Forms and Procedures of Pleadings and Proceedings in the Court of Chancery for Ontario,* 2nd ed. Toronto: R. Carswell, 1876. Great Library, Law Courts, Winnipeg.

Leggo, William. *The Practice of the Court of Chancery for Ontario with Some Observations on the Pleadings in That Court.* 2 vols. Hamilton, 1876. Great Library, Law Courts.

Lloyd, L. C. "The Records of a Borough Court in the Seventeenth Century." *Archives, The Journal of the British Records Association* 7 (1955-56).

Maitland, Frederic W. "Equity, also, the forms of action at common law: two courses of lectures," edited. Cambridge, England: University Press, 1909.

Manitoba Free Press. April 2,1888; January 9, 1889; May 13, 1905; April 28, 1931.

Marsh, Alfred H. *History of the Court of Chancery and the Rise and Development of the Doctrines of Equity.* Toronto: Carswell and Company, 1890.

Martin, Chester. *"Dominion Lands" Policy.* Ed. Lewis H. Thomas. Toronto: McClelland and Stewart Limited, 1973.

Masschaele, Brian. "Memos and Minutes: Arnold Heeney, the Cabinet War Committee and the Establishment of the Canadian Cabinet Secretariat During the Second World War." MA thesis, University of Manitoba, 1995.

McColl, Daisy. "An Administrative History of the Supreme Court of British Columbia With Particular Reference To the Vancouver Registry: Its Court Records, Their Composition, and Their Selection." MA thesis, University of British Columbia, 1987.

McReynolds, R. Michael. "Archivist's Perspective: Legacy of Justice: Legal Records in the National Archives." *Prologue, Journal of the National Archives* 16, no.4 (winter 1984).

Megarry, R.E. *Snell's Principles of Equity,* 3rd ed. London: Sweet and Maxwell, 1947.

Milsom, S.F.C. *Historical Foundations of the Common Law,* 2nd ed. Toronto: Butterworths, 1981.

Morris, Chief Justice Alexander. *Rules of the Court of Queen's Bench of the Province of Manitoba As To Practice.* Winnipeg, 1873. Archive of Manitoba Legal-Judicial History, PAM.

Morton, W.L. *Manitoba, A History,* 2nd ed. Toronto: University of Toronto Press, 1967.

Nesmith, Tom. "The Archival Perspective." *Archivaria* 22 (summer 1986).

Nesmith, Tom. "Archival Studies in English-speaking Canada and the North American Rediscovery of Provenance." In *Canadian Archival Studies,* ed. Tom Nesmith. Metuchen, New Jersey: Scarecrow Press, 1993.

Nesmith, Tom. "'Pen and Plough' at Ontario Agricultural College, 1874-1910." *Archivaria* 19 (winter 1984-85).

Nesmith, Tom. "Toward the Discipline of Archives." *Archivaria* 22 (summer 1986).

Newman, Christine. "Local Court Administration within the Liberty of Allertonshire, 1470-1540." *Archives, The Journal of the British Records Association* 22, no.93 (April 1995).

O'Brien, Jerome. "Archives and the Law: A Brief Look At the Canadian Scene." *Archivaria* 18 (summer 1984).

Orders for the Regulations of the Practice and Proceedings of the Court of Upper Canada from the Establishment of the Court in March, 1837. Archive of Manitoba Legal-Judicial History, PAM.

Owens, James K. "'Untouched Mines' for the Legal Scholar: Records of the Massachusetts Federal Courts in the National Archives." *Massachusetts Law Review* (winter 1989).

Parker, Graham. *Materials On Legal History,* 2nd ed. York University: Osgoode Hall Law School, 1976.

Plucknett, T.F.T. *A Concise History of the Common Law,* 5th ed. Boston: Little, Brown, 1956.

Prestige, Colin. "Historical Records in the Solicitors' Offices." *Archives, the Journal of the British Records Association* 14, no.64 (autumn 1980).

Pryke, K.G. "Adams Archibald." *Dictionary of Canadian Biography* 12 (1988).

"Queen's Bench and Court of Appeal Judges." Archive of Manitoba Legal-Judicial History, PAM.

Rapport, Leonard. "In the Valley of Decision: What To Do about the Multitude of Files of Quasi Cases." *The American Archivist* 48, no.2 (spring 1985).

Read, Frederick. "Early History of the Manitoba Courts." *Manitoba Bar News* 10, nos.1 & 2 (September, October 1937).

Risk, Richard C.B. "A Prospectus for Canadian Legal History." *Dalhousie Law Journal* 1 (1973).

Rothenburg, Jeff. "Ensuring the Longevity of Digital Documents." *Scientific American* (January 1995).

Rules of the Court of Queen's Bench of the Province of Manitoba As To Practice, October Term, 36th Victoria (1873). Archive of Manitoba Legal-Judicial History, PAM.

Schaeffer, Roy. "The Law Society of Upper Canada Archives." *The Law Society Gazette* (1987).

Schaeffer, Roy. "The Osgoode Society of Private Legal Records in Ontario." *Archivaria* (1987).

Schaeffer, Roy, Carolyn Strange, and Cynthia Wright, ed. *Guide to the Archives of The Law Society of Upper Canada.* Toronto: The Law Society of Upper Canada, 1989.

Schwartz, Joan M. "'We make our tools and our tools make us': Lessons from Photographs for the Practice, Politics, and Poetics of Diplomatics." *Archivaria* 40 (fall 1995).

Shepard, C. J. "Court and Legal Records at the Archives of Ontario." *Archivaria* 24 (1987).

Shepard, C. J. "Court Records As Archival Records." *Archivaria* 18 (summer 1984).

Shepard, Catherine, and Peter Oliver. "The Osgoode Society, the Archivist and the Writing of Legal History in Ontario." *Law Society of Upper Canada Gazette* 14 (1980).

Shoemaker, Robert B. "Using Quarter Sessions Records as Evidence for the Study of Crime and Criminal Justice." *Archives, The Journal of the British Records Association* 20, no.90 (October 1993).

Shore, Reta, ed. *Ten Dollars and A Dream.* Steinbach: Parkhill/Cheval Community Club, n.d.

Skillman, Juanita. "Understanding Discovery: A Records Manager's Role in Litigation Support." *Records Management Quarterly* (October 1991).

Slinn, Judy. *Linklaters and Paines: The First One Hundred and Fifty Years.* London: Longman Group U.K. Limited, 1987.

Snell, James G., and Patrick Vaughn. *The Supreme Court of Canada: History of the Institution.* Toronto, 1985.

Solomon, Rayman. "Legal History and the Role of Court Records." *The American Archivist* 42, no.2 (April 1979).

Sprague, D.N. *Canada and the Métis, 1869-1885.* Waterloo: Wilfred Laurier University Press, 1988.

Stibbe, Hugo L. P., trans. *Dutch Source Commentaries.* 's-Gravenhage-Nijmegen: Association of Archivists in the Netherlands, 1987.

Suddards, Roger W. "The Lawyer and the Archivist Went Down to the Filing Room." *Archives, The Journal of the British Records Association* 15, no.66 (October 1981).

Taylor, Hugh. "Through the Minefield." *Archivaria* 21 (winter 1985-86).

Taylor, Hugh. "Transformation in the Archives: Technological Adjustment or Paradigm Shift?" *Archivaria* 25 (winter 1987-88).

Taylor, T. Wardlaw, and G.M. Rae. *General Orders of the Court of Chancery, with Notes and Forms* (Toronto, 1865). Archive of Manitoba Legal-Judicial History, PAM.

Thompson, Thomas J. *Manitoba Hydro, Northern Power Development and Land Claims Pertaining to Non-Status Aboriginals of Norway House and Cross Lake.* MA thesis, University of Manitoba, 1995.

Townshend, James. "History of the Court of Chancery in Nova Scotia." *Canadian Law Times* 20 (1900).

Upper Canada Court of Chancery. *Consolidated General Rules and Orders of the Court of Chancery.* Toronto, 1868. Archive of Manitoba Legal-Judicial History, PAM.

Van Caenegem, R.C. *The Birth of the English Common Law.* London: Cambridge University Press, 1973.

Waddams, S. M. *Introduction To the Study of the Law,* 4th ed. Scarborough, Ontario, 1992.

Weinberg, Allen. "Court Records, Orphans Among Archives." *The American Archivist* 23, no.1 (1960).

Willie, Richard. *"These Legal Gentlemen": Lawyers in Manitoba: 1839-1900.* Winnipeg: Legal Research Institute of the University of Manitoba, 1994.

Wood, Hon. E.B., Hon. J. Dubuc, and Hon. J.A. Miller. *The Orders of the Court of Queen's Bench In Equity.* Winnipeg, 1881. Archive of Manitoba Legal-Judicial History, PAM.

Yogis, John. *Canadian Law Dictionary,* 3rd ed. New York: Barron's Educational Series Inc., 1983.

Zells, Michael L. "Fifteenth-and Sixteenth-Century Wills As Historical Sources." *Archives, The Journal of the British Records Association* 14, no.62 (autumn 1979).

Zobel, Hiller B. "Lawyers' Papers As a Source of Legal History." Part 1. *Law Library Journal* 69 (1976).