

On Dads and Damages: Looking for the “Priceless Child” and the “Manly Modern” in Quebec’s Civil Courts, 1921-1960

PETER GOSSAGE*

This essay explores the legal rights and responsibilities of fathers as they were interpreted by Quebec’s civil courts between 1921 and 1960. The focus is on 59 published cases in which fathers were named as plaintiffs or defendants in actions where legal damages were sought in relation to incidents that involved their children, as either victims or authors of harmful acts. These lawsuits are analysed with specific reference to two key concepts, Viviana Zelizer’s Priceless Child (1985) and Christopher Dummitt’s Manly Modern (2007), with the latter found more useful for understanding the changing dynamics of masculine parenthood in this period.

Ce texte traite des droits et responsabilités juridiques des pères tels que les ont interprétés les tribunaux civils du Québec de 1921 à 1960. L’analyse porte sur 59 litiges ayant fait jurisprudence où les pères sont impliqués soit comme demandeurs soit comme défendeurs. Il s’agit de causes dans lesquelles des dommages-intérêts légaux sont réclamés relativement à des incidents impliquant leurs enfants comme victimes ou comme auteurs d’actes préjudiciables. Ces poursuites sont analysées en faisant spécifiquement référence à deux notions clés : celle de Priceless Child, de Viviana Zelizer (1985), et celle de Manly Modern de Christopher Dummitt (2007), cette dernière s’avérant plus utile pour comprendre l’évolution de la dynamique de la parentalité masculine au cours de cette période.

* Peter Gossage is Professor and Chair in the History Department at Concordia University, Montreal. Elements of this article were presented to the British Association for Canadian Studies in London in April 2015 and to the Canadian Law and Society Association in Calgary in May 2016. It is drawn from a larger exploration of fatherhood in Quebec between 1900 and 1960 which received generous financial support from the Social Sciences and Humanities Research Council of Canada. The author is grateful for that support, for the skilful research assistance of Guillaume Saudrais, Lisa Moore, Marie-Laurence B.-Beaumier, and Jason Butters, and for the insightful comments on earlier drafts provided by Annmarie Adams, Magda Fahrni, Shannon McSheffrey, Eric Reiter, and Robert Rutherfordale, and by two anonymous reviewers on behalf of this journal.

THE HISTORICAL study of fathers and fatherhood provides a unique opportunity to situate men as gendered subjects within the domestic realm and to explore the complex dynamics through which they have understood and performed their roles as both men and parents.¹ Part of a broader exploration of these issues in the context of twentieth-century Quebec, this essay seeks to address the legal rights, status, and obligations of Quebec fathers in the four decades prior to 1960. During this period, the beliefs, behaviours, and institutions associated with twentieth-century modernity made significant inroads in Quebec, notwithstanding the slow pace of institutional reform under Maurice Duplessis and the profound conservatism of the Catholic Church, especially in the areas of family, gender, and sexuality.² In particular, the tensions between traditional and modern conceptions of familial roles and gender identities were building, as major debates played out over adoption, women's suffrage, married women's wages, mandatory school attendance, and family allowances and as pressure mounted for the major reforms of the Civil Code that would come in the 1960s and 1970s.³ At the same time,

- 1 The British and American literatures in this area are especially rich. See, for example, Robert L. Griswold, *Fatherhood in America: A History* (New York: Basic Books, 1993); Laura King, *Family Men: Fatherhood and Masculinity in Britain, 1914-1960* (Oxford: Oxford University Press, 2015); Ralph LaRossa, *The Modernization of Fatherhood: A Social and Political History* (Chicago: University of Chicago Press, 1997); Margaret Marsh, "Suburban Men and Masculine Domesticity, 1870-1915," *American Quarterly*, vol. 40 (1988), pp. 165-186; John Tosh, "Authority and Nurture in Middle-Class Fatherhood: The Case of Early and Mid-Victorian England," *Gender & History*, vol. 8, no. 1 (1996), pp. 48-64. For English Canada, see Cynthia Comacchio, "'A Postscript for Father: Defining a New Fatherhood in Interwar Canada,'" *Canadian Historical Review*, vol. 78, no. 3 (1997), pp. 385-408; Christopher Dummitt, "Finding a Place for Father: Selling the Barbecue in Postwar Canada," *Journal of the Canadian Historical Association*, vol. 9 (1998), pp. 209-223. See also the inspiring series of articles and chapters by Robert Rutherford: "Fatherhood and Masculine Domesticity During the Baby Boom: Consumption and Leisure in Advertising and Life Stories" in Lori Chambers and Edgar-André Montigny, eds., *Family Matters: Papers in Post-Confederation Canadian Family History* (Toronto: Canadian Scholars' Press 1998), pp. 309-333; "New 'Faces' for Fathers: Memory, Life Writing, and Fathers as Providers in the Postwar Consumer Era" in Magda Fahrni and Robert Rutherford, eds., *Creating Postwar Canada: Community, Diversity, and Dissent, 1945-1975* (Vancouver: University of British Columbia Press, 2008), pp. 241-267; and "Three Faces of Fatherhood as a Masculine Category: Tyrants, Teachers, and Workaholics as 'Responsible Family Men' During Canada's Baby Boom" in John H. Arnold and Sean Brady, eds., *What is Masculinity? Historical Dynamics from Antiquity to the Contemporary World* (Basingstoke, UK: Palgrave Macmillan, 2011), pp. 323-348. For an attempt to place the more limited Quebec literature in its international context, see Peter Gossage, "Au nom du père? Rethinking the History of Fatherhood in Quebec," *American Review of Canadian Studies*, vol. 44, no.1 (Spring 2014), pp. 49-67.
- 2 See Peter Gossage and J. I. Little, *An Illustrated History of Quebec: Tradition and Modernity* (Don Mills: Oxford University Press, 2012), especially chap. 9 and 10, where we develop this argument at length for the decades prior to 1960.
- 3 I refer here to two significant reforms of the Civil Code: one in 1964, which expanded women's citizenship rights, and a second in 1977, when the legal concept of *la puissance paternelle* finally gave way to the gender-inclusive *autorité parentale* in Quebec family law. For the more modest reforms of marriage law implemented in 1931, see Maryse Beaulieu, "La condition juridique de la femme mariée (1907-1931) : salaire et communauté. Position de Marie Lacoste Gérin-Lajoie," *Recherches féministes*, vol. 14, no. 1 (2001), pp. 5-14. For a legal perspective on changing conceptions of parental authority, see Nicole Roy, "L'autorité parentale et l'obligation alimentaire des parents envers leur enfant : deux institutions proposant une conception de l'intérêt de l'enfant et de la famille," *Revue du barreau*, vol. 61 (Spring 2001), pp. 51-183. On adoption, see especially Denyse Baillargeon, "Orphans in Quebec: On the Margins of Which Family?" in Nancy Christie and Michael Gauvreau, eds., *Mapping the Margins: The Family and Social Discipline in Canada, 1700-1975* (Montreal and Kingston: McGill-Queen's University Press, 2004), pp. 305-326. On school attendance and family allowance, see Dominique Marshall, *The Social Origins of the Welfare State: Québec Families, Compulsory Education, and Family Allowances, 1940-1955*, trans.

modern ideas around fatherhood—implying more egalitarian relations within the family and a more nurturing role for men with respect to their children—were gaining currency across North America including, as Vincent Duhaime has shown for the period after 1945, in Quebec.⁴

It is well worth asking, then, how tensions or contradictions between different conceptions of paternal rights and obligations were negotiated on the ground, through the application in the courts of the Civil Law, in the 40 years prior to the Quiet Revolution. Toward that end, and building on the work of legal historians such as Cynthia Fish and Guillaume Saudrais,⁵ I have assembled a collection of case reports from the province’s law journals, selected on the basis of their specific engagement with a wide range of issues around paternal authority, rights, and responsibilities.⁶ The particular focus in this essay is a set of 59 civil suits in which claims for damages were made either by or against Quebec fathers, which I propose to examine with the following questions in mind: What sort of compensation could a father expect, and on what legal basis, should his minor child be killed or injured as a result of someone else’s transgression? Conversely, where did a father’s responsibility for the harmful acts of his minor children begin and end? Could he be held accountable before the law for failing to provide the education and vigilance that might have prevented a child’s dangerous behaviour? Finally, how, if at all, did these dynamics evolve in Quebec between 1921 and 1960? In the process, I will use key concepts borrowed from two scholars—Viviana Zelizer’s “priceless child” and Christopher Dummitt’s “manly modern”—as a means of linking these cases to broader ideas about parenting and masculinity and the shifts underway in both of these areas from the 1920s to the 1950s.

Dads as Plaintiffs: Pricing the Priceless Child

The case reports consulted for this project are full of heartbreaking stories about families who had suffered a tragic loss—the accidental death of a child—and about their efforts to collect monetary compensation from the people found legally responsible for those accidents.⁷ Eric Reiter has demonstrated the strong

Nicola Doone Danby (Waterloo: Wilfrid Laurier University Press, 2006).

- 4 Vincent Duhaime, “La construction du père québécois : le discours du mouvement familial et l’expérience des pères, 1945-1965” (MA thesis, History, Université de Montréal, 2000) and ““Les pères ont ici leur devoir”: le discours du mouvement familial québécois et la construction de la paternité dans l’après-guerre, 1945-1960,” *Revue d’histoire de l’Amérique française*, vol. 57, no. 4 (2004), pp. 535-566. See also Michelle Roy, “L’Évolution de la figure paternelle dans les publicités du journal sherbrookois, *La Tribune*, au XX^e siècle” (MA thesis, History, Université de Sherbrooke, 2007); Gossage, “*Au nom du père?*”
- 5 Cynthia Fish, “La puissance paternelle et les cas de garde d’enfants au Québec, 1866-1928,” *Revue d’histoire de l’Amérique française*, vol. 57, no. 4 (2004), pp. 509-533; Guillaume Saudrais, “Maris et pères devant les tribunaux civils québécois, 1900-1920” (MA thesis, History, Université de Sherbrooke, 2010).
- 6 Funding for this research was provided by the Social Sciences and Humanities Research Council of Canada in the context of the project *Pères et paternité au Québec, 1900-1960*. Further studies supported by that grant include Saudrais, “Maris et pères devant les tribunaux civils”; Gossage, “*Au nom du père?*”; and Peter Gossage and Robert Rutherford, eds., *Masculine Histories in the Making: Emerging Themes in Canada* (forthcoming 2018 with University of British Columbia Press).
- 7 The literature on the accidental death of children in Quebec is not vast, but, for an insightful study based on Coroners’ reports, see Catherine Cournoyer, “Les accidents impliquant des enfants et l’attitude envers l’enfance à Montréal (1900-1945)” (MA thesis, History, Université de Montréal, 1999).

ambivalence within the province's legal community around *Solatium Doloris*—literally, solace for pain.⁸ There was contradiction within Quebec's hybrid legal tradition between the French custom, which allowed compensation for the emotional suffering, or “moral prejudice,” attendant upon a child's death, and English law and jurisprudence, which did not. The legal question was formally resolved in an 1887 ruling by the Supreme Court of Canada, which favoured the English interpretation.⁹ As Reiter shows, however, Quebec's judges used a range of arguments to mitigate the ostensible rigidity of the law, which permitted compensation only for the direct costs associated with a child's death (such as funeral and burial costs and medical bills) and for the pecuniary advantages and value, based mainly on a child's expected earning potential, that were lost on the occasion of his or her untimely death.¹⁰

The American sociologist Viviana A. Zelizer has provided a useful framework in which to situate the tension between emotional and material losses associated with the accidental death of a child. In *Pricing the Priceless Child*, Zelizer argues persuasively that, as the economic value of children declined in the late nineteenth and early twentieth centuries, the emotional or sentimental value invested in them by their parents and by society at large increased exponentially. Meanwhile, attaching a *price* to this socially and culturally determined value—as judges and juries were forced to do in awarding damages in civil suits for wrongful death—became extremely difficult and occasionally controversial, since the cold, pecuniary logic of the “useful child” had lost its economic basis in the Progressive Era, with its emphasis on child welfare and child protection.¹¹

Zelizer locates the key shifts in American ideas around the value of children in an earlier period (1870-1930) than the one under scrutiny here (1921-1960). She does push her analysis of child death suits into the 1950s, however, arguing that, as the century progressed, sentimental considerations were entering into judicial rulings in two specific ways: directly, as when individual states passed legislation to allow bereaved parents to claim damages for their emotional anguish and distress; and indirectly, as when the definition of “pecuniary loss” was expanded “to include compensation for the loss of society or companionship of a child” or more generally as more and more substantial awards were made, even in states where there was no legal basis for compensating parents for their emotional suffering.¹² Was a similar process of pushing the boundaries of the law underway in Quebec at the same time? Reiter's analysis of the judicial ambivalence

8 Eric Reiter, “Les Familles, le chagrin et le droit. Les tribunaux québécois entre la tradition du droit civil et la Cour Suprême du Canada” (paper presented to the Institut d'histoire de l'Amérique française, Quebec City, October 18, 2014); Viviana Zelizer, *Pricing the Priceless Child: The Changing Social Value of Children* (Princeton, NJ: Princeton University Press, 1994 [1985]), p. 140.

9 Reiter, “Les Familles, le chagrin et le droit”; *Canadian Pacific Ry Co v. Robinson* (1887), 14 SCR 105, June 20, 1887. This restriction on the awarding of moral damages was overturned in 1996 when the Supreme Court awarded compensation for emotional suffering to the mother of Anthony Griffin, a young Black man who had been shot and killed by a Montreal police officer; see Supreme Court of Canada, Augustus v. Gosset (1996), 3 SCR 268, October 3, 1996.

10 Reiter, “Les Familles, le chagrin et le droit.”

11 Zelizer, *Pricing the Priceless Child*, pp. 138-168.

12 *Ibid.*, pp. 145-155.

surrounding *Solatium Doloris* certainly suggests as much. So too does my reading of 25 civil suits launched between 1921 and 1960 by bereaved fathers seeking financial compensation for the wrongful deaths of their children.

Although my main interest is in minor children (the average age of the victims in these cases is 12 years), suits for the wrongful death of older offspring, especially sons with “good prospects,” were quite common.¹³ Given the persistent legal construction of children as financial assets whose loss would entail material hardship, it is not surprising to find so many male teenagers and young adults in this collection. Indeed, of the 26 victims in this collection all but five were boys or young men.¹⁴ Male children were both easier to present in court as potential wage-earners and statistically more likely to fall victim to accidental death, in an era when modern industrial and transportation technologies were introducing new risks and transforming older patterns of work, play, and daily life.¹⁵ Such was definitely the case for the six workplace fatalities in this collection, including the 1927 explosion that cost the life of 21-year-old Léo Leboeuf, who was struck by debris scattered during a Valleyfield dredging operation.¹⁶ It also seems to apply to the traffic accidents to which a slim majority of these children (16 of the 26) had fallen victim. This trend, by the way, is consistent with Catherine Cournoyer’s analysis for Montreal, which shows a marked rise after 1920 in the proportion of child deaths resulting from traffic accidents, most now involving cars or trucks, rather than tramways or horse-drawn vehicles as in the preceding decades.¹⁷

All too typical was the case of eight-year-old Jacqueline Joleaud, who had been riding her tricycle on a sidewalk in Outremont on November 21, 1929, at 5:00 in the afternoon: the most dangerous time of day for children in the streets of North American cities.¹⁸ As she attempted to cross Querbes Street, Jacqueline was struck and killed by a car driven on the wrong side of the road by a man

13 The victims in these cases ranged in age from 18 months to 23 years. Minor children throughout this period were those aged less than 21 years; the age of majority in Quebec was lowered from 21 to 18 in 1971.

14 There were 26 victims in these 25 cases because one involved two brothers killed simultaneously in a boating accident. The number of girls among these victims (5 out of 26 or just under 20%) matches the proportion of girls among children killed by accident outside the home in Montreal between 1900 and 1945, which was 18%. The gender distribution for children killed in domestic accidents was much more balanced: 46% girls to 54% boys. See Cournoyer, “Les accidents impliquant des enfants,” Tables VII and VIII, pp. 58 and 60.

15 The competition for urban space between new technologies and children’s bodies is one of the central themes in Cournoyer’s study; see “Les accidents impliquant des enfants,” especially pp. 45-76. On the emergence of an accident-prevention discourse and infrastructure in early twentieth-century Quebec, see Magda Fahrni, “‘La lutte contre l’accident’: risque et accidents dans un contexte de modernité industrielle” in David Niget and Martin Petitclerc, eds., *Pour une histoire du risque*: Québec, France, Belgique (Québec City: Les Presses de l’Université du Québec, 2012), pp. 181-202.

16 Wilfrid Leboeuf v. Montreal Cottons, Limited, *La Revue de jurisprudence*, vol. 34 (1928), pp. 321-331.

17 Cournoyer, “Les accidents impliquant des enfants,” Tables IV and V, pp. 48 and 52.

18 Joleaud v. Fortier, *La Revue légale*, nouvelle série vol. 37 (1931), pp. 210-213. The dangers associated with dusk or early evening from this perspective are well documented. Cournoyer found that most fatal accidents involving Montreal children occurred between 4:00 and 7:00 p.m.; see her “Les accidents impliquant des enfants,” p. 89. Similarly, between October 1957 and September 1958, some 44% of the 324 young pedestrians injured in car accidents and treated at the Montreal Children’s Hospital had been struck between 4:00 and 8:00 p.m. See Ruth McDougall, “Traffic Accidents to Children,” *Canadian Medical Association Journal*, vol. 82, no. 2 (January 9, 1960), p. 62. For the United States, see Zelizer, *Pricing the Priceless Child*, p. 50.

named Fortier. Jacqueline's father sued the driver for the considerable sum of \$15,000, including medical and funeral costs amounting to about \$260, but also over \$14,000 for "la perte des services de ladite Jacqueline Joleaud et l'assistance que ses parents pouvaient attendre d'elle."¹⁹ While he confirmed Fortier's fault in the accident and ruled in favour of the girl's father, Judge Édouard Fabre Surveyer of Montreal's Superior Court also reduced the award for loss of services very substantially, from over \$14,000 to \$250, making for a total award of \$509. The judge's logic reveals the strictly material terms in which the law framed these awards. The cash value of young Jacqueline's potential service and assistance later in life was estimated at only \$250, taking into account her father's financial condition, his age, and the fact that the dead girl had two older sisters "qui peuvent rendre les mêmes services."²⁰ The father's pecuniary loss was thus mitigated by the presence of further "assets" in his household, in the form of two surviving daughters. There is no mention in the decision of any form of compensation for moral, emotional, or psychological suffering on the part of Joleaud or his wife, which is to say that *Solatium Doloris* was a non-starter for this judge.

As Reiter has shown, however, the tensions, ambivalence, and outright opposition to this strict pecuniary calculus do show up in Quebec courtrooms during this period.²¹ There are numerous references to the concept of "préjudice moral," including several in which such arguments were accepted by the presiding judge. In a leading case heard on appeal before the Court of King's Bench in Quebec City, a minimal award made by the lower court for damages in the death of a nine-year-old girl—a mere \$136 for funeral expenses only, compared to the plaintiff's claim for \$5,000—was revised upwards to include a further \$500 in damages. The judgement stated, in part, that the father of a child "qui a perdu la vie en conséquence d'un délit, a droit de réclamer de l'auteur du délit des dommages-intérêts pour le *préjudice moral* qu'il éprouve."²² Similarly, Judge Weir of the Montreal Superior Court allowed \$1,000 in damages for "moral prejudice" in a 1926 case involving a four-year-old girl who had been run over by a milk truck.²³ Two decades later, the father of teenaged twins killed when their friend's sailboat struck live power lines argued, in his suit against the Shawinigan Water and Power Company, not only that he had been wrongly deprived of substantial pecuniary benefits in the future—each boy being industrious, in good health, well educated, and assured of a brilliant career—but also that "cette mort lui a causé une perturbation dans sa vie par la perte des joies du foyer et de la part du bonheur qu'il attendait de ses enfants."²⁴ The argument was rejected by Judge Langlais of the Trois-Rivières Superior Court, convinced no doubt by defence counsel's

19 Joleaud v. Fortier, p. 212.

20 *Ibid.*

21 This was also the period in which American legislators and courts began both revising or re-interpreting the legal rules and making larger and larger awards; see Zelizer, *Pricing the Priceless Child*, pp. 153-155.

22 Hunter v. Gingras, *Rapports judiciaires de Québec* (Banc du Roi), vol. 33 (1922), pp. 403-420 (citation at p. 404, emphasis added).

23 Chaussé v. J. J. Joubert et Compagnie, Limitée, *Rapports judiciaires de Québec*, vol. 65 (1927), pp. 144-148.

24 Hackett v. The Shawinigan Water and Power Co., *Rapports de pratique de Québec* (1950), p. 191.

contention that this was just a clever way of disguising the plaintiff’s plea to be compensated financially for his family’s grief. But it is interesting just the same.

We might now shift our focus to April 28, 1956, when young Leonard Pearce, no longer a minor at 22 years of age, was struck by a car and killed while walking along Metropolitan Boulevard in Pointe-Claire.²⁵ The driver fled the scene but was traced to his Verdun home by police, after an alert witness reported his licence plate number.²⁶ The plaintiff in this case was the victim’s father, Harry Pearce, a 46-year-old railway foreman who lived in nearby Valois with his wife and three surviving children. Pearce sued the hit-and-run driver in a case heard in September 1958 before Judge Ignace Deslauriers of the Montreal Superior Court, for the rather extraordinary amount of \$29,392.41. The bereaved father included some rarely seen items in his estimate (\$1,392.41) of the direct expenses deriving from Leonard’s untimely death. Among them were the standard funeral and burial costs (totalling \$555.80) but also the cost of cards, stamps, telegrams, transportation, a funeral dress for Mrs. Pearce, and a bronze plaque “élevé en pieux hommage à la mémoire du défunt.”²⁷ Harry Pearce also sought specific amounts for Leonard’s room-and-board (the preceding six months at \$3 per day, payment of which he claimed to have been promised by his late son) and for the lawyers’ fees he had accumulated in the preparation of his suit for damages. Interestingly, Pearce and his lawyers made separate arguments as to compensation for himself and his wife. For himself, he claimed a total of \$13,000, broken down as follows: \$5,000 for “perte de soutien future”; \$5,000 for “perte de réconfort, d’affection, de dévouement et d’assistance”; and \$3,000 for “la douleur, la souffrance et l’inconvénient que la mort de son fils lui a occasionnés.”²⁸ For his wife, Pearce claimed a further \$15,000, including \$10,000 for loss of future support, comfort, affection, devotion, and assistance, plus a full \$5,000 for his wife’s pain, suffering, and inconvenience, the intensity of which (to judge from these amounts) was understood to be measurably greater than his own.²⁹

In his ruling, Judge Deslaurier did not award anything approaching the entire amount; among other things, he rejected Pearce’s application for the cost of the bronze plaque and the funeral dress. However, the court awarded \$1,000 each to Mr. and Mrs. Pearce for the “préjudice certain subi par la perte d’un membre de leur famille”³⁰—a decision that brought the total award up to \$5,555, the largest single award among the 25 examined here. The judge’s language in framing his ruling is interesting and suggests considerably more flexibility in interpreting the law in this area than we saw in the case of Jacqueline Joleaud some 30 years earlier: “Les enfants n’existent pas simplement pour donner éventuellement quelques dollars à leurs vieux parents,” wrote the judge:

25 Pearce v. Buckley, *Rapports judiciaires de Québec* (1960), pp. 145-154.

26 “Six Persons Die in Weekend Accidents: Police Hold Verdunite in Hit-Run,” *The Gazette*, April 30, 1956, p. 3.

27 Pearce v. Buckley, p. 147.

28 *Ibid.*, pp. 147-148.

29 *Ibid.*, p. 148. “While the economically useful child was legally ‘owned’ by the father,” Zelizer reminds us, “the ‘priceless’ child is considered the mother’s sentimental asset” (*Pricing the Priceless Child*, p. 159).

30 Pearce v. Buckley, p. 153.

Bien souvent, ceux-ci n'ont pas besoin de cette aide. L'avantage pour les parents d'avoir des enfants a, sur toute leur vie, une influence considérable. Pour le père, ils peuvent motiver l'ambition et l'ardeur au travail qui lui permettent de donner la pleine mesure de ses talents. Chez la mère, les mêmes réactions se manifestent sous des formes différentes [...] Même éloignés, l'existence des enfants a sur la vie des parents une influence bienfaisante indéniable. Quand les enfants et les petits-enfants sont là, il est moins difficile pour les parents de vieillir.³¹

In the end, however, while the principles and awards debated by lawyers and decided by judges in suits for the wrongful death of children are illustrative, the extent to which such cases demonstrate shifts in the ways in which Quebec men understood and performed their role as fathers is less apparent. Certainly, there are hints here of a significant disconnect between a cultural and social climate that would acknowledge the moral and emotional suffering attendant upon the accidental death of a child and a legal system that continued to allow compensation for pecuniary losses only. There was a growing discomfort, too, with the perverse fact that negligent drivers who caused accidents that killed innocent young people had much less to lose, as far as legal damages were concerned, than those who, by similar careless acts, caused disfigurement or permanent disability. This growing tension, while interesting, may not mean that parents in general and fathers in particular were making greater emotional investments in their children, however. A better vantage point might be the converse situation, in which fathers were sued for monetary damages related to moral and physical injuries, up to and including fatalities, *caused by* their minor children—as opposed to those *suffered by* them.

Dads as Defendants: In Search of the Manly Modern

Among the 59 civil suits selected for this study, 37 involved fathers as defendants: men who faced legal action stemming from the harmful behaviour of their children.³² It must be noted immediately that all of these lawsuits involved transgressions committed by boys and young men; not a single girl or young woman, in other words, appears among the 37 minors whose harmful acts led to the legal action documented here.³³ If nothing else, then, these cases offer a window onto the wide range of risk-taking activities engaged in by male youth in this period. Included here, for example, are an 11-year milkman's son who knocked over a pedestrian while riding his sled down a steep, icy street in Black Lake;³⁴ several boys who ran into people with their bicycles, including one to be described in more detail

31 Pearce v. Buckley, p. 150.

32 Two of these cases were also included in the previous section, since they featured *both* a bereaved father acting as plaintiff and another father, the defendant, whose child had caused a fatal injury. They are Juneau v. Paquette, *Rapports judiciaires de Québec* (Cour Supérieure), vol. 61 (1923), pp. 539-541, and Aubry v. Savard, *Rapports judiciaires de Québec*, vol. 75 (1937), pp. 548-556.

33 While this imbalance is striking, it seems likely that a larger collection of similar suits would yield a proportion of female "offenders" more closely in line with their level of representation, for instance, in the juvenile justice system, which ranged between 9% and 19% in Montreal between 1914 and 1945. See Tamara Myers, *Caught: Montreal's Modern Girls and the Law, 1869-1945* (Toronto: University of Toronto Press, 2006), Table 5.1, p. 138.

34 Vallée v. La Corporation de la Ville de Black Lake, *La Revue de jurisprudence*, vol. 35 (1929), pp. 11-20.

below;³⁵ and boys causing accidents while playing with inflammable or explosive materials, including gasoline and blasting caps.³⁶ There is a rather bizarre case from the 1940s of a youth giving his father a ride in a borrowed *aéroglysseur*—a primitive, propeller-driven snowmobile—when they collided with a man driving a horse and wagon; the unshielded propeller shredded the man’s arm, resulting in a permanent disability.³⁷ There are even several cases of accidental shootings caused by boys who had access either to pellet guns or to real firearms, such as a revolver or a hunting rifle.³⁸ Finally, once again, there are all of those accidents, many of them fatal, caused by reckless, imprudent, or unfortunate youths while operating the machine that came to symbolize both modernity and masculinity in the twentieth century: the automobile.

Most of these cases turned specifically on the court’s application of article 1054 of the Quebec Civil Code, which placed the burden squarely on the shoulders of a father whose minor child committed acts causing injury to someone else. The relevant passage, unchanged from 1866 to 1977, reads as follows: “The father, or, after his decease, the mother, is responsible for the damage caused by their minor children; [...] The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable to prevent the act which caused the damage.”³⁹ Fathers, in other words, were legally responsible for their children’s harmful acts unless they could prove in court that nothing they might have done could have prevented those acts.

Critically for present purposes, these cases therefore provide an opportunity to examine the expectations placed by society and the law on the father-son relationship as a privileged space for the teaching and learning of manly behaviours and identity. They illustrate the expectations placed on fathers—by society, through the courts—in providing a masculine moral compass for their sons, through proper education, through appropriate supervision, and by setting the right kind of example. In particular, I will suggest, fathers were expected to transmit to their sons that emerging bundle of traits and characteristics, many of them wrapped up in twentieth-century conceptions of active risk-taking and responsible risk-management, that Christopher Dummitt—studying postwar Vancouver—calls the *Manly Modern*. Dummitt’s chapter on automobile safety is especially relevant here, given the number of car accidents in this collection. Safe driving, he suggests, was increasingly framed as “a kind of masculine achievement” that reflected modern, manly qualities such as a disciplined character, diligent awareness, foresight, and responsible behaviour. These must surely be counted among the key qualities that modern fathers were expected to

35 Myre, *Appelant v. White, Intimé*, *Rapports judiciaires de Québec*, vol. 72 (1934), pp. 557-562.

36 Martin, *ès-qual. v. Greenberg*, *Rapports judiciaires de Québec*, vol. 71 (1933), pp. 350-355; Cutnam v. Léveillé, *La Revue légale*, nouvelle série vol. 37 (1931), pp. 84-99.

37 Toutant v. Bossé et autres, *Rapports judiciaires de Québec* (1942), pp. 439-443.

38 Pépin v. Petit, *Rapports judiciaires de Québec* (1949), pp. 255-256; Leipinaitis v. Martin et A. Leipinaitis, demandeur par reprise d’instance, *Rapports judiciaires de Québec*, vol. 69 (1931), pp. 459-461; Tardif, *ès-qualité v. Paquette et un autre*, *Rapports judiciaires de Québec*, vol. 74 (1936), pp. 482-484.

39 Paul-André Crépeau and John E. C. Brierley, eds., *Code civil—Civil code, 1866-1980. Édition historique et critique—An Historical and Critical Edition* (Montreal: Chambre des notaires du Québec—Société québécoise d’information juridique, 1981), p. 370.

instil in their adolescent sons, whether at the wheel or in other settings, both by setting a good example and through active efforts at education.⁴⁰

The number of relevant cases described in Quebec's law reports increased noticeably in the interwar period, peaking in the 1930s; just over half (19 of 37) date from the years between 1930 and 1939. The case of 15-year-old Montrealer René Myre is typical.⁴¹ René had been cycling on Turgeon Street in the early evening of May 13, 1933, when he struck and seriously injured a 12-year-old girl, whom he seems to have been deliberately chasing. René's father was the defendant in a lawsuit heard in Montreal's Superior Court in 1934. In his ruling, Judge De Lorimier ordered the elder Myre to pay more than \$2,000 to the father of the injured girl—a ruling that was confirmed on appeal to the Court of King's Bench. Clearly Myre had not met his burden of proof under Article 1054: he had failed to convince the court that there was nothing he might have done to prevent the accident. The opinion of Judge St-Jacques, who sat on the panel that upheld this judgement on appeal, is worth citing. The boy's father argued that he had provided young René and his 12 siblings with the best of everything, including education and material goods, such as the fateful bicycle. While this generosity certainly established that Myre had a comfortable income,

[...] il n'en résulte pas nécessairement qu'il ait donné à René une éducation soignée et qu'il l'ait particulièrement instruit sur la façon de conduire une bicyclette, qu'il lui ait recommandé, par exemple, de ne pas poursuivre les petites filles, soit pour leur faire peur soit pour leur causer des ennuis. Le père qui achète une bicyclette pour son fils de quatorze ou quinze ans, lui permet de s'en servir dans les rues d'une cité populeuse comme celle de Montréal, ne commet pas nécessairement une grande imprudence. Mais il prend, tout de même, le risque que son enfant puisse se causer à lui-même et causer à d'autres des dommages par la conduite imprudente ou maladroite de ce véhicule.⁴²

This ruling and others like it beg the question as to what sorts of circumstances and arguments might allow fathers to meet their burden of proof under article 1054. Two more cases from the 1930s provide some hints. In *Asselin v. Jarry*, from 1933, a prosperous automobile dealer, Odessa Jarry, was sued for \$35,000 after his son had killed two people in a late-night collision: a criminal act for which the youth, who had been drinking, was charged with manslaughter and convicted of criminal negligence.⁴³ The jury in this case concluded that the young driver, who had had two previous accidents, should not have been trusted behind

40 Christopher Dummitt, *The Manly Modern: Masculinity in Postwar Canada* (Vancouver: University of British Columbia Press, 2007), especially chap. 6, "On the Road," pp. 125-149 (citation at p.127). Cotten Seiler's *Republic of Drivers: A Cultural History of Automobility in America* (Chicago: University of Chicago Press, 2008) contains similarly rich insights into the gendered dynamics of driving: a modern, masculine activity that added a new dimension to the established trope of "rugged individualism." See especially pp. 85-89.

41 Myre v. White.

42 *Ibid.*, p. 560.

43 Dame Alice Asselin v. Odessa Jarry, et al., *La Revue de jurisprudence* 40 (1934): 478-93; "Amireault Widow will Claim \$50,000," *The Gazette*, March 11, 1933, p. 6; "Jarry Case Ruling Reversed in Part," *The Gazette*, November 7, 1933, p. 3.

the wheel and that his father ought to have foreseen the tragedy. Judge Wilson of Montreal Superior Court overruled this verdict, however, maintaining that Jarry senior had met his burden of proof, in part by denying any knowledge that his son had a fondness for liquor or late-night joy rides. “Le père de famille,” he decided, “n’est pas responsable d’un accident qui a pu être causé par son fils, s’il prouve qu’il a donné à celui-ci la meilleure éducation possible, qu’il n’était pas à la connaissance du père que le fils faisait usage de boissons enivrantes, que lui le père, ne pouvait raisonnablement prévoir ce malheur, qu’il n’était pas présent dans la voiture au moment où l’accident s’est produit, et qu’il n’a pu empêcher le fait qui a causé le dommage.”⁴⁴ Still in the 1930s in a much different setting—a hunting excursion—a father was sued for damages after his son accidentally shot and injured a fellow hunter.⁴⁵ The father, Narcisse Paquette, was not held responsible under article 1054, primarily because his son, Gaston-Léopold, had almost reached the age of majority at the time of the accident. Here, the judge ruled that in these circumstances, “la victime ne peut exercer un recours contre le père du délinquant, s’il résulte de l’enquête que le fils du défendeur avait reçu une bonne éducation, s’était toujours conduit d’une façon exemplaire et qu’il avait alors atteint un âge où dans son milieu social on laisse aux jeunes gens une grande liberté d’action.”⁴⁶ The son himself, having reached the age of 21 by the time the trial was heard, was ordered in this case to pay damages in the amount of \$300.

Overall, about one-third of the fathers in this collection of cases (13 of 37) made successful exculpatory arguments, convincing judges across Quebec that there was nothing they might have done differently, in educating or supervising their sons, to prevent the harmful behaviour for which damages were claimed. Generally speaking, in cases in which boys were understood to have been engaged in play—even aggressive and risky forms of play, such as throwing stones and playing with matches—fathers stood a greater chance of meeting their burden of proof than in other circumstances. In *Martin v. Greenberg*, the defendant was a Montreal grocer whose son Edward (14) had taken a can of gasoline from the store to clean his bicycle; his younger son Solly (9) took a box of matches. Ultimately, the gas can went up in flames and the plaintiff’s son, Cecil Martin, was badly burned. The ruling from Judge Robert Greenshields of Montreal Superior Court was that the fault lay with the younger son, Solly Greenberg, who had taken the matches and kicked the can over while fleeing the scene. However, “The presumption of fault imposed upon the father of a minor son by article 1054 C.C., is rebutted, if the father establishes that he did everything in the way of education, both religious and secular that a father could do and gave every care to the proper upbringing of his minor child and affirmatively proves that he was in no way at fault.”⁴⁷ In this case, once again, a jury’s verdict against the boys’ father was set aside, and Greenshields dismissed the action against the grocer *non obstante veredicto* (notwithstanding the verdict) based on the boy’s overall good

44 Asselin v. Jarry et al., pp. 478-479.

45 Tardif, ès-qualité v. Paquette, et un autre.

46 *Ibid.*, p. 482

47 *Martin, ès-qual. v. Greenberg, Rapports judiciaires de Québec*, vol. 71 (1933), p. 350.

character and his father's attention to his secular and religious instruction. Ruling on a 1950s case involving risky play in the streets of Montreal—a boy had struck a pebble (*caillou*) with a baseball bat, breaking a car window and seriously injuring the driver—Judge Gérard Trudel made similar arguments in somewhat more philosophical terms, influenced perhaps by the developmental psychology of the day: “L’automatisme de la responsabilité est [...] inconcevable dans les relations de père à fils. L’enfant, même mineur, garde son tempérament, son caractère, et les qualités et défauts que la nature lui a donnés, sans que les parents y soient pour rien. C’est ainsi que se forme la personnalité et la liberté de l’homme. La personnalité et la liberté du mineur ne peuvent donc exister et engager en même temps la responsabilité absolue du père.”⁴⁸

The majority of cases in this collection, however, involved boys and young men who were judged to have indeed crossed the line between a masculine norm of rough, aggressive, sometimes risky play and dangerous, undisciplined, or even criminal behaviour that, in the court's opinion, a prudent father ought to have prevented through better education and supervision. When young Edna Carty, for instance, was blinded in one eye by a stone propelled from the slingshot of 13-year-old John Morkill, the judge found the boy's father responsible because he had never forbidden his son from using the device or even reprimanded him for it. Parents must do more, ruled the judge, than provide their children with a good moral and religious education: “ils doivent aussi les empêcher d’acquérir des habitudes, ou de se servir de choses pouvant causer des dommages à autrui; autrement ils doivent être tenus responsables des dommages causés par ces habitudes ou ces choses.”⁴⁹ Similar rulings were made in two 1930s cases in which boys aged 13 and 11 shot other children with rifles, in one case perforating a boy's bladder and in the other killing a four-year-old girl.⁵⁰ In *Cutnam v. Leveillé*, the foreman of a dredging crew was held responsible after failing to prevent his son (17) and a younger boy (12) from playing with some nitro-glycerine blasting caps that he had stored in an unlocked shed near his home, resulting in an explosion that cost the younger boy several fingers of his left hand. This is one of the clearest cases of paternal negligence in this collection, with the careless foreman's responsibility a foregone conclusion and the only issue at trial being the amount of compensation to be awarded.⁵¹

Just as interesting, if perhaps more difficult for the courts to assess, are several cases in which fathers were sued for acts committed by their sons that resulted in other kinds of injuries, namely to honour, reputation, and property. In two cases here, for instance, men were sued for moral damages and lying-in expenses after

48 Pruneau v. Mianney, *Rapports judiciaires de Québec* (1956), p. 350.

49 Robert Carty v. The Board of Protestant School Commissioners of the City of Sherbrooke and John T. Morkill, *La Revue de jurisprudence*, vol. 32 (1926), p. 157.

50 Gosselin v. Dalpé, *La Revue légale*, vol. 43 (1937), pp. 163-167; Aubry v. Savard, *Rapports judiciaires de Québec*, vol. 75 (1937), pp. 548-556. In the latter case, the boy in question was given unfettered access to a hunting rifle by his uncle, with whom he lived in the Saguenay region and to whom paternal responsibilities were held to attach, despite the fact that his actual father was still living and visited on occasion.

51 *Cutnam vs Léveillé*, *La Revue légale*, nouvelle série vol. 37 (1931), pp. 84-99.

their minor sons had become involved in sexual liaisons leading to pregnancy.⁵² There are two further cases in which fathers were sued because their sons had directed verbal attacks and other moral injuries at third parties. One plaintiff was a pool-room operator who was subjected to drunken insults when he tried to eject young Jean-Louis Cantin from the restaurant attached to his establishment. The court found for the plaintiff and ruled, essentially, that Cantin (*père*) should have set a better example, especially in the area of alcohol consumption, in a judgement that included the phrase “*Tel père, tel fils.*”⁵³

In circumstances in which the minor’s transgression rose to the level of a criminal act, moreover, judges were particularly disinclined to entertain exculpatory arguments. In one case, heard in the Superior Court for the Richelieu District in 1950, a 20-year-old youth who had stolen \$230 was described from the bench as an incorrigible delinquent who had been in and out of reform school since the age of nine. In his ruling for the plaintiff, Judge Charles-Auguste Bertrand essentially accused the boy’s father of lax parenting. In cases like this, argued Bertrand, a *laisser-faire* attitude combined with the occasional verbal reproach will have no effect: “plus l’enfant affiche des penchants répréhensibles, plus la sévérité du père doit s’exercer, par des répressions au besoin cuisantes, à lui inspirer une crainte salutaire.”⁵⁴ In another case from the 1950s, Alcide Pelland was sued for damages after his 16-year-old son Robert “borrowed” his car and, along with three friends, robbed a jewelry store of \$12,000 in merchandise. Although the Joliette Superior Court initially dismissed the action, the decision was reversed on appeal to Montreal’s Court of King’s Bench. According to the four judges, Alcide Pelland could have prevented the jewel heist by offering young Robert a good education and proper supervision. In particular, Pelland was reproached for having raised young Robert in an unsavoury rooming house, for having supported his son from the proceeds of illegal liquor sales, and for having taught him “le mépris de la loi et du serment” by encouraging him to lie to authorities in order to obtain a driver’s licence at age 16.⁵⁵

Of all the cases in which fathers were sued for damages related to their sons’ transgressions, the largest plurality (15 of the 37) involved youthful operators of automobiles and other motorized vehicles.⁵⁶ Ten of these fathers were found responsible and ordered to pay damages ranging from a few hundred dollars for the repair of a car to tens of thousands for serious injuries resulting in permanent disabilities. To what extent do these cases in particular support Dummitt’s argument—made for postwar Vancouver but surely more widely applicable—that contemporary understandings of the modern, responsible manhood and of the modern, responsible driver closely mirrored each other? What kind of safe-driving rhetoric emerges from these Quebec cases, which are predominantly from the interwar period but which also extend into the 1950s? And if “the process

52 A v. L., *Rapports judiciaires de Québec*, vol. 70 (1932), pp. 127-128; A. v. A., *Rapports judiciaires de Québec* (1945), pp. 545-553.

53 Labonté v. Cantin, *Rapports judiciaires de Québec*, vol. 70 (1932), p. 116

54 V. v. M., *Rapports judiciaires de Québec* (1950), p. 380

55 Dénommé v. Pelland, *Rapports judiciaires de Québec* (1960), pp. 421-422.

56 Specifically, three trucks and one propeller-driven snowmobile (*aéroglisneur*).

of becoming a safe driver closely resembled the process of becoming a modern man,⁵⁷ to what extent were fathers—in their “modernized” role as educators and role models—understood to be responsible, at some level, for guiding their sons through both of these processes, and thus legally accountable when they failed?⁵⁸

When minor sons got behind the wheel and caused injury to the person or property of others, their fathers were legally responsible by default. In their attempts to absolve themselves of this burden—and especially of the financial liability that went with it—these men made similar arguments about education, supervision, and responsibility to those we have already seen. In the case of automobile accidents, however, it was also necessary to make another set of arguments, offering evidence of the youth’s experience and competence as a driver. After an 18-year-old youth, driving his father’s car, collided with another vehicle on King Street in Sherbrooke in July 1930, for instance, the other driver sued for damages resulting from the accident. In this case, the plaintiff maintained firstly that the collision was the young man’s fault and secondly that the defendant, Hébert, was doubly responsible: as the boy’s father, under article 1054, and under Section 53, paragraph 2 of Quebec’s Motor Vehicles Act (1924) as the owner of the vehicle that had caused the damage.⁵⁹ To establish that there was nothing he might have done to prevent the accident, Hébert argued not only that he had provided his son with a good education and appropriate supervision, but that his son was an experienced driver with a good safety record and the holder of a valid driver’s licence issued by the provincial government. For Justice White of the Superior Court, St. Francis District, this argument was “sufficient to establish that the father was unable to prevent the act which caused the damage.” Indeed, continued the judge, “it would seem that the only way in which he could have ‘prevented the act which caused the damage’ would be that he would not have permitted his son to drive the car, but the defendant’s son had a license to drive a car, which license had been properly issued, by the Government of the Province. He was accustomed to drive a car and had never previously had an accident.”⁶⁰

In a string of cases from the 1950s, several fathers made successful exculpatory arguments under article 1054. While the details vary, the defendants generally stuck to a standard script, framing their unfortunate sons as competent, experienced drivers who had been given a sound education and never previously shown the kinds of tendencies that might predictably lead them down such a dangerous road. More frequently, however, the default position in the Civil Code—that fathers were responsible for damages caused by their minor children—was held to apply. Outcomes depended somewhat on the judge’s discretion and on his assessment of the circumstances and the character of the parties in question. In 1933, Judge

57 Dummitt, *The Manly Modern*, p. 24.

58 For the international literature on the “new” fatherhood in this period, see the references in note 1, especially Griswold, *Fatherhood in America* and LaRossa, *The Modernization of Fatherhood*. The relevant Quebec literature is summarized in Gossage, “*Au nom du père?*” but see in particular Duhaime, *La construction du père québécois* and “Les pères ont ici leur devoir”; Roy, “L’Évolution de la figure paternelle.”

59 *Quebec Statutes* 14 George V (1924), *Loi concernant les véhicules automobiles*, section 53, paragraph 2, p. 115.

60 Hébert v. Fabi, *La Revue légale*, nouvelle série vol. 39 (1933), p. 209.

Surveyer of the Montreal Superior Court, ruled against the father of 18-year-old Armand Ross, who had sped recklessly through a red light in Ville-Émard with at least four passengers in his Pontiac. These included his parents—whom he was apparently trying to frighten by driving so fast—and a girl named Jeanne Dansereau, who was injured when the car collided with another vehicle. Although Armand Ross was a licensed driver and although in this instance he was being directly supervised, albeit to no great effect, by his father, Surveyer ruled that Ross (*père*) could have prevented the collision had he refused to allow his son to buy the car or apply for his licence, knowing as he did that the youth was “un chauffeur incompétent, imprudent et amateur de vitesse.”⁶¹ Speeding was a factor in many of these collisions, and drivers like Arthur Côté, who in 1930 hit another car while driving his father’s truck at a speed of 25 or 30 miles per hour (he admitted to 26, whereas the speed limit for trucks was 15) could expect little mercy from the bench. This was especially true if the purpose of the fateful journey was sheer amusement, as in this case: the accident occurred on a September evening at 8:40 p.m. with “quatre jeunes filles” along for the ride in Côté’s truck.⁶²

Vigilant fathers might certainly have had difficulty predicting whether their sons might be prone to risky driving at high speeds, so judges had some discretion here. In cases in which young men involved in car accidents were found to have been driving without a valid licence, however, they had much less latitude. In a 1956 decision, Judge William Morin of the Superior Court, Arthabaska District, seems to have been inclined to rule for the defendant, a farmer named Bolduc whose testimony Morin described as that of “un père de famille qui s’occupe de ses enfants.” The offending youth was described as a hardworking lad who had the skill and experience required to manage the family farm in his father’s absence each winter, a responsibility that implied “un travail incessant et de nombreux problèmes d’administration.” Morin states in his ruling that he would have preferred to absolve Bolduc (*père*) of any responsibility for the accident, which occurred because both his son and the other driver had been driving too close to the centre of a recently gravelled road, rather than on the right as required by law. The problem for the younger Bolduc, and indeed for his father, was that he had been driving without a licence when the accident occurred. This was no small matter, and it left the judge with no choice other than to rule, reluctantly, that the father might have prevented the accident by insisting that his son obey the law and refrain from driving without a valid permit.⁶³

Although the stakes were much higher—there were no injuries in the Bolduc collision and the total amount of damages awarded was only \$151—the issues were quite similar in a case heard by Judge Hector Perrier of Montreal Superior Court just one year later, in 1957. This near head-on collision was caused by

61 Dansereau v. Ross, *La Revue légale*, nouvelle série vol. 39 (1933), p. 194; see also *La Revue de jurisprudence*, vol. 39 (1933), pp. 282-288.

62 Lemieux v. Côté, *La Revue de jurisprudence*, vol. 37 (1931), pp. 307-312 (quotation at p. 308).

63 Fournier v. Bolduc, *Rapports judiciaires de Québec* (1956), pp. 226-228 (quotation at p. 228). In part, the ruling reads as follows: “[D]ans le cas où le père permet à son fils mineur de commettre un acte défendu par la loi, la responsabilité du père quant aux délits ou quasi-délits commis par son fils mineur est alors engagée.”

Pierre Perras, aged only 16, who while driving a heavily loaded truck on a rural highway near Laprairie had attempted to pass a slow-moving tractor on a blind curve, forcing an oncoming car driven by the plaintiff—a commercial traveller named Glencross, on the road for General Electric—into the ditch. The badly injured victim was rushed to the Montreal General Hospital where he survived several surgeries to emerge with a partial but permanent disability estimated at 50 per cent. The damages ultimately awarded were very substantial (\$50,331, reduced from an initial claim of \$74,514) but covered in part (\$11,774) by La Commission des Accidents du Travail (Workmen's Compensation Board). More interesting for us is the discussion as to whether Pierre's parents, Paul Perras and Éva Charrest, should be held accountable for their son's tragic error. The couple were separate as to property, and Éva was both the legal owner of the truck in question and Paul's *de facto* partner in the construction business for which their son worked; as a result both were named as defendants in this case, which is unusual in this collection. The defence strategy was to argue that young Paul had received a good education, that he was a skilled driver, and that the terrible accident could not therefore have been foreseen or prevented.⁶⁴

Judge Perrier did not accept these arguments. In particular, he was astonished by the evidence advanced by Pierre's parents to support the claim that their son was a skilled driver: "la preuve," he writes, "révèle le fait étonnant qu'il a commencé à conduire le camion de ses parents à l'âge de six ans." Perrier then made a careful distinction between skill (*habilité*) and competence: "Il est probable que le défendeur Pierre Perras ait eu assez d'habilité pour conduire ce camion, mais avait-il la compétence requise par le législateur?" The provincial government, after all, had set 17 years (reduced from 18 in 1943) as the age at which young Quebecers could be trusted behind the wheel. "Le législateur," mused Perrier in his ruling, "a-t-il pensé qu'en bas de cet âge, un jeune peut ne pas posséder assez d'esprit de concentration pour parer à tous les risques et dangers de la circulation, ou encore qu'il se laisse aller à la témérité et à la frénésie de la vitesse?" Like the Bolduc boy, Pierre Perras did not possess a valid driver's licence at the time of the accident. Although he did have a licence, he had obtained it fraudulently by lying under oath about his age (he was 16), a lie compounded in these circumstances by his father's complicity and disregard for the law in counter-signing the application. "Le législateur," continued the judge, "a-t-il prévu qu'un jeune garçon pourrait, plus facilement qu'un homme d'âge mûr, commettre des imprudences aussi graves que celle qui a été commise par le défendeur Pierre Perras?" In violating so openly and obviously the terms of the Motor Vehicles Act in allowing their 16-year-old son to drive a heavily loaded truck in the furtherance of their construction business, the boy's father and mother "ont commis une faute et ne peuvent pas prétendre qu'ils ont pris tous les moyens possibles pour empêcher l'accident dont leur fils a été la cause."⁶⁵

One final case, while it turned less on article 1054 of the Civil Code, nonetheless reveals much about the burden the law placed on fathers for the

64 *Glencross v. Dame Charrest et autres, Rapports judiciaires de Québec* (1958), pp. 600-605.

65 *Ibid.* (all quotations at p. 604).

education and supervision of their children, especially their male children, and especially the terms under which Quebec fathers might be held accountable for their sons’ mistakes. Stemming from a hit-and-run accident, this suit for damages went all the way to the Supreme Court and was reported in at least one Montreal newspaper.⁶⁶ On Dominion Day in 1950, Richard Foley Jr., aged 18, spent the evening in the garage of his father’s house in Montreal, drinking beer with a group of friends to celebrate the return of his brother from a trip to Africa. His father, Richard Foley Sr., went to bed at about 11:00 p.m., taking the keys to his car into the bedroom with him. Sometime after that, without waking up his Dad to ask permission or borrow the keys, Richard Jr. took the car—which he started by hot-wiring the ignition—and drove with two of his friends to Iberville, near St-Jean-sur-Richelieu, to visit a third. The next morning, the group went to a local hotel or tavern where they resumed their drinking spree until about 11:30 a.m. Soon after their departure, on the road between Iberville and Farnham, the car driven by Richard Foley Jr. struck a young girl, Yvette Marcoux, who was riding her bicycle and who was seriously injured. Richard Jr. and his friends left the scene, without offering any assistance to the victim. They abandoned the car in Iberville and returned to Montreal, each on his own, apparently. Guilty of a hit-and-run collision causing serious injuries while under the influence of alcohol, Richard Jr. stayed on the south shore a little longer than the others, then returned to Montreal where he hid under a tent, in a vain attempt to avoid arrest.

Richard Foley Jr. almost certainly faced criminal charges for negligence, drunk driving, and fleeing the scene of an accident, although I have only found one brief mention of his apprehension by the police. Meanwhile in Superior Court, Yvette’s father, Ovila Marcoux, sued Richard Foley Sr., both personally and in his capacity as tutor to his minor son, for damages in the amount of \$75,000. Yvette Marcoux’s injuries are described in the report only as “serious” (*graves*) but one suspects, from the size of the claim, that they must have required extensive medical care and resulted in a permanent disability. As we have seen, no claim of this size—and the irony was not lost on many jurists at the time—could have been contemplated had the Marcoux’s “priceless child” been killed in this accident. Ultimately, Judge Charles-Édouard Ferland found for the plaintiff in Superior Court, awarding \$26,843.81 in damages, a ruling that was upheld on appeal by a majority ruling from the Court of Queen’s Bench for the District of Montreal and, ultimately, by the Supreme Court of Canada. Article 1054 did not apply in this case because it was not specifically cited in the plaintiff’s initial declaration, as it certainly might have been. So the courts ruled instead on the basis of the much more general article 1053: “Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.”⁶⁷ The ruling against Foley Sr., then, was based on his own negligence and imprudence in taking insufficient measures to ensure that his car was not operated by a potentially reckless or imprudent

66 Supreme Court of Canada, *Foley v. Marcoux*, (1957) *SCR* 650, October 1, 1957; “\$28,600 Question: Is Father Responsible if Keys Withheld,” *The Gazette*, May 28, 1957, p. 17.

67 Crépeau and Brierley, eds., *Code Civil/Civil Code*, p. 369.

driver.⁶⁸ Foley knew or should have known that beer was being consumed in his garage the night before the accident. Instead of exercising the necessary vigilance, he went to bed and left these boys to their own devices. His one precaution was to keep the car keys with him, but he must have known that young Richard knew how to hot-wire the car—because his son had apparently done so in the past. He had therefore committed a serious error of omission and was condemned by the Supreme Court to suffer all of the consequences prescribed by the law, namely an award for damages in excess of \$25,000. In the final judgement, written by Justice Taschereau with Justice Rand dissenting, it was decided that Foley Sr. “n’a pas exercé la surveillance voulue dans le choix du conducteur. Il n’est pas suffisant pour se disculper de la responsabilité civile, de donner des instructions, mais encore faut-il voir à ce que ces instructions soient observées.”⁶⁹

Although article 1054 with its specific invocation of paternal responsibility for a child’s misdeeds was not applied in this case, I think the issues for the study of fatherhood are no less clear and compelling. Could Richard Foley Sr. have prevented the bad acts that caused the damage inflicted by Richard Jr. on little Yvette and her family, represented here by her father and tutor Ovilva Marcoux? Could he simply have locked the car door to prevent his son from slipping in and hot-wiring it? Should he have stayed up a bit later or at least issued a stern warning about not taking the car before going bed? Might he have provided his son with tighter and more consistent supervision, rather than the “kindly tolerance” that, as was argued in court, characterized his parenting style? Might he have offered Richard Jr. a better education, particularly in the area of road safety and the dangers of drinking and driving? Is there even, perhaps, a sense in which Foley Sr. was on trial for his failure to provide his son with adequate notions of civic responsibility? A hit-and-run driver, plainly, is the antithesis of a responsible citizen who can be relied on to own up to his transgressions and offer help to people in need. The fact that responsible citizenship in this era was coded male certainly bears repeating. As Dummitt points out, hit-and-run drivers were among those most readily tarred by safety experts and others “with characteristics considered to be unmanly.”⁷⁰ Real men, after all, don’t injure little girls then run and hide under tents to avoid the consequences.

Conclusion

We can return in conclusion to Zelizer’s *Priceless Child* and Dummitt’s *Manly Modern*. It would be difficult to contemplate a Quebec version of Zelizer’s careful reconstruction of the material value placed on the lives of children, especially by insurance companies and in suits for wrongful death, in twentieth-century America. Peter Baskerville’s recent essay on Canadians and especially Quebecers

68 The terms of the Supreme Court ruling were, in part, as follows: “When in an action against father for damages caused by his minor son while driving his father’s car with permission there is no allegation of the minority of the son and it is admitted that the son was not the préposé of his father, the latter cannot be held responsible under art 1054 CC. But his responsibility will be engaged under art 1053 CC if it is proved that he was negligent in permitting his son to take his car” (Foley v. Marcoux, p. 650).

69 Foley v. Marcoux, p. 654. See also the *Gazette* article on this ruling, cited in note 82.

70 Dummitt, *The Manly Modern*, p. 140.

who took out life insurance on their children, based on census microdata for 1911, provides one piece of a complex puzzle; but there is much more to be done.⁷¹ Still, Zelizer’s ideas provide a framework for understanding the sorts of calculations and negotiations that were present in civil suits in which bereaved parents sought some kind of compensation for the tragic loss of a child. Certainly, the logic whereby children could be counted as economic assets was receding, in Quebec as elsewhere, as studies of fertility have shown and as the interesting 1940s debate over family allowances demonstrates nicely.⁷² At the same time, pressure for a new form of legal compensation that could acknowledge the moral and emotional suffering attendant upon the loss of an increasingly priceless child does seem to have been growing, over a period of four decades which saw similar trends in the United States, especially as the case for such compensation might be strengthened with reference to French legal traditions.

At first brush, such considerations seem to provide further evidence for the modernization of Quebec fatherhood as the twentieth century progressed. By all accounts, this process would have involved the reinforcement of emotional ties between fathers and their children, as families became more democratic and as the paternal role grew less authoritarian and more nurturing. Catherine Cournoyer, along these lines, has observed a growing trend for fathers to express their grief, anguish, and indignation publicly following the death of a beloved child, leading her to speculate about an emerging space for fathers in which “certaines vertus masculines tels le stoïcisme et la dureté se [seraient] érodés au profit d’une plus grande liberté d’expression émotionnelle.”⁷³ Duhaime has shown that while there was resistance to such changes from within the Catholic families movement, that they were nonetheless underway, although perhaps on a different timetable from other parts of North America.⁷⁴ While the growing tension around *Solatium Doloris* is fascinating, however, it does not necessarily reveal very much about the changing culture, ideology, and sentimental content of fatherhood in Quebec. Fathers certainly seem to have been asking the courts more frequently to award compensation, and in larger amounts, for the grief they suffered upon the loss of a child. Was that because they had been investing more emotional capital in their increasingly precious children, and therefore feeling the pain of such an unthinkable loss more intensely? Perhaps. But one might just as reasonably assume that they did so primarily as the legal heads and representatives of their families, rather than in their own names as injured male individuals seeking compensation for a tragic personal loss. Unless they were widows, after all, bereaved mothers had no independent legal recourse in such circumstances prior to 1964. And a grieving

71 Peter Baskerville, “The Worth of Children and Women: Life Insurance in Early Twentieth-Century Canada” in Gordon Darroch, ed., *The Dawn of Canada’s Century: Hidden Histories* (Montreal and Kingston: McGill-Queen’s University Press, 2014), pp. 452-480.

72 Danielle Gauvreau, Diane Gervais, and Peter Gossage, *La Fécondité des Québécoises, 1870-1970. D’une exception à l’autre* (Montreal: Les Éditions du Boréal, 2007); Marshall, *The Social Origins of the Welfare State*.

73 Cournoyer, “Les accidents impliquant des enfants,” p. 120.

74 Duhaime, *La construction du père québécois* and “Les pères ont ici leur devoir.” For a discussion of Father’s Day as an expression and performance of the new fatherhood in Quebec, see Gossage, “Celebrating the Family Man” (forthcoming 2018).

father like Harry Pearce, as we have seen, might still in the 1950s construct his own pain at the loss of a cherished son as measurably less intense (about 33 per cent less, by his own estimate) than that of the boy's mother.

For Dads as defendants, on the other hand, the modern conception of fathers as engaged educators and role models—especially for their sons—was at the very heart of the matter. Richard Foley Sr., for instance, was held to account precisely for his failure to transmit to Richard Jr. the values associated with what Rutherforddale calls “responsible family manhood”: values like honesty, honour, courage, hard work, sobriety, and a sense of duty.⁷⁵ Dummitt adds a useful nuance here, suggesting that, while early twentieth-century conceptions of “the reasonable and responsible man” were framed as a moralistic call for “good character and self-restraint,” the discussion had shifted by the 1950s, when “the language of technocratic risk management” had taken over.⁷⁶ Both of these points of emphasis can be read in the litigation around reckless, imprudent, or unfortunate sons that we have examined here, which extends from the 1920s into the 1950s. Clearly, judges were at some pains to assess the moral character of the offending youths. In so doing, they focused in particular on whether their fathers had provided them with a good example, effective discipline, appropriate supervision, and especially a solid secular and religious education. Young Solly Greenberg, who as we have seen burned another boy while playing with matches and gasoline, was “given the very best of character by his teacher, as to conduct, application and intelligence.” He also had the benefit, it emerged at trial, of “a religious teacher in religion attended weekly, if not daily, at the house of the defendant, and taught the Hebrew religion with all that that means, to this boy.”⁷⁷ Just as clearly, however, judges were increasingly disposed to include admonitions about rational risk management in their rulings, as did Judge Hector Perrier, whose distinction between mere “skill” and true “competence” behind the wheel, whose insistence on wisdom of the minimum age for Quebec drivers (17 years at the time), and whose expression of shock that a boy's parents would so cavalierly disregard that legislation and the expertise on which it was based we have already noted.⁷⁸

For Dummitt, modernity and masculinity converge around the inter-related ideas of courageous risk-taking and responsible risk management in the new, high-technology environment of postwar British Columbia. The idea that some preliminary version of Dummitt's “manly modern” was already operating in Quebec in the interwar and early postwar period has been suggested by Magda Fahrni in her ongoing exploration of the experts and organizations that comprised what she calls the “accident-prevention infrastructure.”⁷⁹ Lawsuits claiming a father's liability for his son's injurious acts offer another window onto this ideology while adding a fresh dimension: that of the father-son relationship as a

75 See especially Rutherforddale, “Three Faces of Fatherhood.”

76 Dummitt, *The Manly Modern*, pp. 126-127.

77 Martin, *ès-qual*. v. Greenberg, pp. 353-354.

78 *Glencross v. Dame Charrest et autres*.

79 See Fahrni, “La lutte contre l'accident” and especially her forthcoming essay entitled “Accident Prevention in Early Twentieth-Century Quebec and the Emergence of Masculine Technical Expertise” in Gossage and Rutherforddale, eds., *Masculine Histories in the Making* (forthcoming 2018).

key locus of its transmission. With the spread of powerful technologies, especially the automobile, new challenges and expectations emerged for teenagers and young men caught between the power, fun, and excitement of risk-taking behaviour and the exigencies of modern manhood, with all its emphasis on responsible risk management. The idea that fathers should teach their sons to manage this tension is revealed clearly in these cases, especially those that turned on section 1054 of the Civil Code, the terms of which made paternal responsibility for damages caused by minor children a matter of law. In many cases, the failure to equip their sons with both a proper sense of masculine responsibility and the privileged bodies of knowledge required to safely operate modern machines like bicycles and rifles—but especially cars—was a failure to live up to the expectations of twentieth-century society with regard to the proper performance of the paternal role. Those failures are valuable, as in any historical study of transgression, mainly for what they tell us about the boundaries across which men *as fathers* (and thus as teachers and role models, especially for their sons) were not expected or, ultimately, permitted to stray.