LAW REFORM COMMISSION

MANITOBA

COMMISSION DE RÉFORME DU DROIT

REPORT ON THE STRUCTURE OF THE COURTS; PART I: AMALGAMATION OF THE COURT OF QUEEN'S BENCH AND THE COUNTY COURTS OF MANITOBA

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The Manitoba Law Reform Commission was established by *"The Law Reform Commission Act"* in 1970 and began functioning in 1971.

The Commissioners are:

C.H.C. Edwards, Q.C., *Chairman*
Knox B. Foster, Q.C.
D. Trevor Anderson
George H. Lockwood, C.C.J.
Richard Thompson
Geraldine MacNamara
M. Anne Riley

Chief Legal Research Officer:

Ms. Donna J. Miller

Legal Research Officers:

Ms. Sandra Geddes
Ms. Colleen Kovacs
Ms. Valerie C. Perry
Ms. Janice Tokar

Secretary:

Miss Suzanne Pelletier

The Commission offices are located at 521 Woodswroth Building, 405 Broadway, Winnipeg, Manitoba R3C 3L6. Tel. (204) 944 2896.

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CHAPTER 1

INTRODUCTION

Terms of Reference

1.01 In May 1981, the Manitoba Law Reform Commission received a request from the Honourable the Attorney-General to inquire into and consider the possible merger of the County Courts with the Court of Queen's Bench.

1.02 The Commission was also asked to consider, in relation to this topic, or as independent topics:

(a) means to ensure or improve the speedy, inexpensive and appropriate adjudication of small claims;

(b) whether there should be any transfer or return to the courts of work now being done by various special tribunals; and

(c) any other modifications of the jurisdiction, structure or operation of the trial courts that would benefit the administration of justice in the province.

1.03 In September, 1981 the Commission requested and received approval from the Honourable the Attorney-General to defer the consideration of the topic referred to in sub-paragraph (b) above since this would involve a very large study of all administrative tribunals in the Province and delay report on the other areas of the reference.

1.04 A substantial part of our inquiries has concerned the adjudication of smaller claims by appropriate and accessible tribunals through inexpensive and expeditious processes. This has involved an assessment of the small claims

jurisdiction under Part II of The County Courts Act , where disputes are now adjudicated by clerks of the County Courts. This aspect of the study is continuing and will be the subject of a separate report in the near future.

1.05 However, it has seemed appropriate to report immediately on the particular question of reorganization of the system of trial courts, in order to allow its early resolution by the Legislature. This will reduce any period of uncertainty that might adversely affect the existing Courts in planning for the conduct of current business and, if any changes are decided upon, permit a prompt start in the necessarily rather elaborate sequence of legislative and administrative measures required to consider and make such reforms.

1.06 Accordingly, this Report addresses the issue as to whether there should be only one trial court of general jurisdiction in Manitoba to replace the County Courts and Court of Queen's Bench. This Report is confined to a general discussion of considerations relevant to that issue. We have thought it appropriate to leave the details of implementing any changes in court structure and process to the Legislature, the Executive and the Court, each in its proper sphere of responsibility.

1.07 The structure of this Report is as follows. In Chapter 2 we address the general issue as to whether there should be one trial court of general jurisdiction in Manitoba. In the succeeding chapters we devote our attention to special concerns arising from this general issue and to the further question of the implementation, broadly speaking, of our recommendations in this Report.

Hearings and Submissions

1.08 The Commission appointed a small study group which held meetings throughout the province with bar associations to gain the views of the legal profession. These included meetings with the Central Bar Association at Portage la Prairie, the Western Bar Association at Brandon, and the Dauphin Bar Association at Dauphin. The group also met with the Northern District Bar (The

Pas and Flin Flon) at The Pas and the Northern District Bar (Thompson) at Thompson.

1.09 The group met with the Chief Justice of Manitoba, the Chief Justice of the Court of Queen's Bench, the Chief Judge of the County Courts and the Chief Judge of the Provincial Judges' Court. In addition, there were meetings with other members of the Bench and Bar in Brandon, Winnipeg, and St.Boniface.

1.10 By letters and notices, the study group solicited as well the observations and opinions of members of the Bench and Bar and of various organizations or associations of lawyers. Some informative and helpful letters were received. The study group had the benefit of discussions with invited groups of lawyers with special experience in particular fields of practice.

1.11 The Commission has been given much assistance in interviews and correspondence, by court members and officials and by law reform and other agencies in other provinces where re-organization of superior trial courts has been studied or implemented.

1.12 The Legislative Counsel, the Prothonotary and members of his office, the office of the Commissioner for Judicial Affairs, and others have at all times willingly and helpfully met all requests for information and assistance.

Acknowledgments

1.13 To all those who have responded to our requests for information and opinions, we are grateful for the help and guidance thus given to this study. We wish particularly to acknowledge the advice and assistance of Harold St.George Stubbs, Q.C., Secretary Emeritus of The Law Society of Manitoba, who was a member of our special study group.

CHAPTER 2

THE GENERAL ISSUE: SHOULD THE COURT OF QUEEN'S BENCH AND THE COUNTY COURTS OF MANITOBA BE MERGED TO FORM A SUPERIOR TRIAL COURT OF GENERAL JURISDICTION FOR MANITOBA?

Purpose of this Chapter

2.01 The purpose of this Chapter is to address the general issue: whether there should be one superior trial court of general jurisdiction in Manitoba to exercise all of the powers now exercised by the Court of Queen's Bench and the County Courts of Manitoba. Chapter 3 will discuss in more detail special issues and concerns to be considered in proposing or implementing any changes in the existing court structure.

Introduction

2.02 Manitoba has two trial Courts with members appointed by the Governor General in Council under section 96 of the Constitution Act, 1867 (formerly the British North America Act, 1867): The Court of Queen's Bench and the County Courts of Manitoba.

2.03 Although the two Courts have substantially similar jurisdiction today (which will be detailed later) this was not always so. Indeed, when these two Courts were organized in the 1870's, the jurisdiction granted to each differed significantly. Whereas the Court of Queen's Bench had "jurisdiction over all matters of Law and Equity" and possessed all "powers and authorities" of the Superior Courts of Law and Equity, and of Probate in England, this was not the case with the County Courts. Rather, their authority was limited to debts not exceeding $100.00 and to petty assaults and batteries where damages claimed did not exceed $25.00.

2.04 The limits of authority placed upon the County Courts were gradually removed by the Legislature through a number of amendments. The jurisdiction

of the Court of Queen's Bench, having all the powers inherent in the English Superior Courts, could not expand correspondingly with the result that, over time, the County Courts' jurisdiction overlapped more and more. The gradual erosion of the limits of authority placed upon the County Courts is exemplified by amendments which increased the County Courts' monetary jurisdiction: while the limit for contract and debt was set at $250.00 in 1887, that limit inched upwards to $500.00 in 1908, to $800.00 and $2,000.00 in 1934 and 1958 respectively and in 1976 to the current $10,000.00 limit, or unlimited monetary jurisdiction should all parties consent.

2.05 This evolution concerning the jurisdiction of the two Courts is but one reason for making the review of the court structure now desirable. Also relevant is the fact that in centres outside Winnipeg, while members of the local Bar feel the public are admirably served by the current resident County Court judges and would not wish to lose this benefit, there is perceptible inconvenience caused by the existing dual court system. Difficulties arise from time to time given the limited number and duration of Queen's Bench sittings and the need to apply in Winnipeg for orders and relief that are not within the power of the resident judge to grant. These problems have also arisen in other provinces; their occurrence here has caused the Manitoba Bar Association and the Western Bar Association to express support for the replacement of the existing dual court system by a single trial court of general jurisdiction.

General Considerations

2.06 Certain general considerations or criteria have been borne in mind in addressing the central issue as to whether the County Courts and the Queen's Bench should be united in a single trial court of general jurisdiction. These include (in no particular order):

1. The court structure to be proposed should be one suited to the conditions and requirements of Manitoba. Experience elsewhere is interesting and instructive but cannot, of itself, be conclusive authority for or against change, or any particular

method or pattern of changes, in Manitoba.

2. A fundamental restructuring of the court system should be done in a long-term perspective. Any new design should be appropriate to the needs of the future, and not be restricted by inconsistent historical or conventional practices.

3. The realizable benefits of any proposed change should outweigh any perceived disadvantages of such change, and the overall effect of the change should be to improve (or create the conditions to improve), rather than to reduce, the public service of the courts in all aspects and regions.

4. A good court structure should be rational, with divisions of function or jurisdiction based on purposes served rather than merely on accidental or historical factors.

5. A good court structure should provide flexibility, allowing suitable and timely response to changes in the volume, nature, and location of the work of the courts.

6. A good court structure should be efficient, in that it can meet the public need for court services as expeditiously and inexpensively as is consistent with the requirements of due process and justice.

7. A good court system should be intelligible; its design, status, and process should be clear to lawyers and generally understandable by interested laymen.

8. A good court system should make its processes accessible to the public to be served, a principle that has implications for the location, frequency, scheduling, and cost of its proceedings and its administrative direction and support services.

9. A good court system should command the confidence of lawyers and litigants that they will receive equal and impartial justice and should encourage respect for the law.

10. A good court system should attract to its membership the most highly qualified judges to whom appointment may be offered.

11. A good court structure should provide conditions in which (as the report on court merger presented to the Attorney-General of Saskatchewan in 1979 said) "individual members of the judiciary have the opportunity to develop their knowledge and understanding of law in a stimulating environment" and which will "recognize the need for a degree of specialization among the judiciary and the likelihood that some judges are more learned in some areas of the law than others".

12. A good court structure should also preserve and foster the fundamental principle and requirement of the independence of the judiciary.

The Similar Jurisdiction of the Two Courts

2.07 It appears to us that the processes of time have already created in Manitoba what are in effect two courts of substantially similar or indeed competing jurisdictions. In the Appendix to this Report we set out in detail the relative jurisdictions of the two Courts in the areas of appellate function, family and criminal law and in some miscellaneous matters. We merely wish to highlight here some of the similarities and differences of authority of the two Courts:

1. In family law, each Court has almost identical jurisdiction, although the pattern of practice has been to initiate proceedings in the Queen's Bench.

2. In civil litigation, while the Queen's Bench has unlimited jurisdiction, the County Courts have jurisdiction in respect of sums or property up to $10,000 or unlimited monetary jurisdiction if there is the consent of the parties.

3. The procedure and court-awarded costs in civil litigation, although regulated by different sets of rules and procedures, are substantially similar. For example, if a claim exceeds $2,000 and the parties proceed to trial, there would generally be (subject to judicial discretion) no distinction in the amount of court costs awarded if the trial proceeded in a County Court rather than the Queen's Bench.

4. In criminal law, the Queen's Bench hears charges tried by judge and jury and bail applications for those charged with certain serious offences. There is little distinction in authority although, in practice, judges of the County Courts hear most trials required to be heard by federally-appointed judges when no jury is sitting.

5. With respect to appellate matters, we have listed in the Appendix several examples of the Legislature conferring appellate jurisdiction either exclusively upon the County Courts or the Queen's Bench. It should be noted that no statute makes one court an appeal court over the other.

6. The Queen's Bench has exclusive authority, as part of its inherent jurisdiction, to order the prerogative remedies of certiorari, prohibition and mandamus, among others.

2.08 Some comment on this existing distribution of powers between the two Courts seems to be in order at this point.

1. The allocation of authority between the two Courts appears to us to be a product of historical events, and does not reflect in any way a planned division of responsibilities based on some rational scheme for division of function and development of special expertise.

2. It has not been suggested to us that the judges of one court are more particularly fitted by their pre-judicial

experience and general qualifications than the judges of the other court for particular kinds of work.

3. Given the substantial overlap of jurisdiction between the two Courts that has come to exist, the remaining differences or unique features in their respective jurisdictions seem increasingly anomalous. They have, indeed, become the source of difficulties or grievance on occasion. In particular, we have been told by lawyers in centres outside Winnipeg of inconvenience experienced in obtaining timely orders or relief where prerogative aid, committeeship orders or applications for bail on murder charges, are concerned.

Reforms Elsewhere

2.09 Fusion of the County Courts and Queen's Bench (or their equivalents) has in recent years been achieved in Prince Edward Island, New Brunswick, Alberta and Saskatchewan and is to be proposed for consideration in Newfoundland. While no experience in another jurisdiction is necessarily applicable to Manitoba, it seems to us that circumstances in Alberta and Saskatchewan are more similar to those in Manitoba than conditions in say, Ontario, with its larger and differently-distributed population, or Quebec, which has a court structure and history rather different than that of this common law province.

Reasons for Fusion of the Courts

2.10 Having discussed the overlap of jurisdiction between the two Courts and the introduction of amalgamation in other provinces, we now consider whether there continues to be justification for retaining a dual trial court system, or whether the County Courts and the Queen's Bench should be united in a single trial court of general jurisdiction. We put the matter in this way for two reasons. First, it is not intended at all to suggest that the existing system is manifestly bad and in urgent need for reform; second, the existence of two trial courts having substantially similar jurisdiction and

procedures would appear to be an unusual situation, the continuance of which ought to be justified. In fact there seem to us to be strong positive reasons for amalgamating the County Courts and the Queen's Bench or for replacing them with a single trial court of general jurisdiction. These reasons we now set out briefly as follows.

2.11 Flexibility and efficiency - or, at least, appropriate conditions for organizing judicial business in a responsive and efficient way - can be attained by a reorganization of the system combining the creation of a single trial court and, within that court, a new system of judicial circuits and new measures for scheduling judicial time.

1. The establishment of one trial court would permit, through a single administration and a unified court staff, the flexible and immediate marshalling of resources to meet current and actual requirements. In a single court, it will be possible to assign judges and court personnel and to schedule sittings more efficiently.

2. By comprehensive scheduling, a unified court may be able to cope with increasing workloads without either an increase in numbers or the imposition of undue caseloads on members of the court.

3. Through the elimination of any existing duplication of forms, filings, court staffs and so on, costs may be controlled.

4. By appropriate administrative measures within a unified court, caseloads will be more readily managed and monitored.

5. Comprehensive and flexible scheduling can avoid the inconvenience sometimes caused by the current differences in jurisdiction between the Courts in having to wait for sittings of another court.

6. Administrative measures to match judicial expertise to

special requirements or work will be facilitated. To the degree that 'specialization' by the judiciary is required, it can be achieved in a flexible, non-rigid, common sense way within the larger unified court.

7. The larger court would have the resources to respond to new demands in the judicial system, such as a unified family court.

2.12 Simplicity - A sound basic principle of judicial organization is that the structure and procedures of the court should be as simple as possible. Union of the Courts would eliminate such confusion on the part of litigants and lawyers as to the choice of forum or procedure for particular cases as now occurs or is likely to occur when there are two, substantially similar and competitive, courts.

2.13 Equality before the law - The creation of a merged court will recognize the principle of equality before the law. It would overcome the almost unavoidable perception when there are two courts, even where there is a large area of function and jurisprudence common to both, that one is inferior in status to the other, and the unfortunate but inescapable inference that the quality of justice received by litigants in the one court is inferior to that available in the other court.

2.14 Improvement of the administration of justice in rural districts - Parties and lawyers in the Northern and other judicial districts will be able to have prompt access to the court in the plenitude of its judicial power if local judges are judges of a court combining the powers of the existing Queen's Bench and County Courts and if a new system of judicial circuits, developed within the new court, brings additional judicial visitations to each district. We have been told by lawyers in centres outside Winnipeg that general legal service to the public is disrupted when a solicitor must leave his office to go to Winnipeg to obtain from the Queen's Bench a judicial order or remedy not available to him locally in the County Court.

2.15 Feasibility, opportunity and means - It is to be noted also that in Manitoba there already exist conditions which opportunely can facilitate swift and smooth replacement of the two trial Courts by a new single court:

1. Recently, there has been an administrative consolidation and reorganization of staff serving the Queen's Bench and County Courts into a structure that will, with relatively slight modification, serve a new or merged court.

2. The great majority of the members of the County Courts and all the judges of the Queen's Bench are located in the Eastern Judicial District and, indeed, have their offices within the same courts complex.

3. There is an existing and strengthening relationship of cordiality and respect between the members of the two Courts and some history of co-operation or combination on matters of concern, such as educational seminars.

2.16 Receptivity of the profession - Merger of the County Courts and the Queen's Bench was recommended in 1978 by a special committee to the Manitoba Bar Association and the Law Society of Manitoba. That recommendation was in general terms endorsed in principle by the Manitoba Bar Association, the Western Bar, and the Law Society of Manitoba. In our present inquiry, we have found these opinions unchanged; in particular, members of the Bar practising in judicial centres outside Winnipeg generally continue to endorse the concept of a single superior trial court and see in it the potential to create a new more comprehensive and flexible schedule or system of court sittings that would enlarge their clients' access to the judicial process and resolve the problems now occasionally caused by the division of the Courts.

2.17 It will thus be seen that there are strong reasons for now completing the historical process, already so far advanced, of uniting the jurisdictions of the County Courts and the Queen's Bench in a single court.

Arguments against Merger

2.18 We have sought to give the fullest consideration to all arguments that might be made against merger, recognizing, as we have said, that any fundamental changes should be viewed in a long-term perspective, that potential advantages should outweigh perceived disadvantages, and that any proposed new system must satisfy the existing and foreseen requirements of this Province.

2.19 We must, however, report that in our extensive interviews and correspondence throughout the Province, the concept of a single superior trial court was generally approved. Several did not think change was needed as the existing structures worked quite well; or would prefer not to have established patterns of practice and workload altered; or are concerned (particularly in regional centres) that service of the courts to their clients now available in many matters because of the accessibility and co-operation of resident judges not be impaired.

2.20 Notwithstanding that no developed case against merger has been put to us, we have given attention to several arguments that have been advanced in other jurisdictions and at other times. These should be described here briefly, although, in our opinion, they do not have relevance or force in Manitoba today.

2.21 One objection to merger was based on the proposition that the judges in the County Courts may not have the qualifications suitable for the Court of Queen's Bench. It may have been the case many years ago that the qualifications for appointment to the County Courts were not necessarily as high as those required for the Queen's Bench, but this cannot be said to have been so in recent memory. There is general agreement that there is now no question as to the County Court bench's capacity to do the work of the Queen's Bench. Indeed, as has been pointed out, they do that work now, considering the broad range of civil and criminal matters in which the jurisdiction of the County Courts is practically co-extensive with that of the Queen's Bench, the

important and difficult matters (such as those under The Builders' Liens Act) referred exclusively to the County Courts and the entrustment of Queen's Bench work to County Court judges as local judges of the Court of Queen's Bench. Indeed, we have now, de facto , two competing courts of substantially co-ordinate jurisdiction.

2.22 The suggestion has been made elsewhere that the existence of two courts permits specialization of function, in that the "second tier" court may bring special expertise to work of particular difficulty or importance. However, division of work between the two Courts is not made on this basis today (when the County Court judges deal regularly with matters that are complex, difficult and important e.g. in the civil sphere, builders' liens and in the criminal sphere, all but a few indictable offences when a jury is not sitting). Nor is a "tiering" and division of cases between courts on the basis of complexity or importance a feasible or probable future development within the existing system. What is feasible, and necessary, is some specialization by matching judicial experience and expertise to the special requirements of particular cases or classes of cases; and this, it seems to us, is best done administratively within the court system and will be facilitated within a single unified court.

2.23 Another point (in a sense the reverse of the last point) is that upon amalgamation judges of the former Court of Queen's Bench will not be competent or comfortable in dealing with various special matters (such as license suspension appeals or duties under miscellaneous statutes) now dealt with by the County Courts. For our part, we have complete confidence that the judges can adapt readily to any requirements of unfamiliar responsibilities, just as they continually meet the challenge of new developments and problems in the law. In any event, spread over the larger unified court the volume of such special work will be readily managed; in the first days of the new single court, by internal administrative arrangement, those judges with prior County Court experience can continue to do this specialized work or provide assistance to their brother judges to whom it is, initially, somewhat unfamiliar.

2.24 Another argument that has been heard elsewhere is that a small

superior court enjoys a 'collegial' atmosphere in which, through daily association, the judiciary develop their standards, knowledge, and continuing education. In Manitoba, a unified court would not be so large as to prevent such degree of collegiality as may be desirable; and the larger 'pool' of experience would facilitate useful educative discussion within the court.

A 'Non-issue': Resident Judges

2.25 A concern that has been expressed, and one which we regard as important to consider, is that on merger or fusion regional centres may lose the advantage of resident judges. We consider the question of resident judges at length in Chapter 3; indeed, we propose a combination of residencies and circuits that should extend, not restrict, such advantages as there are in having resident judges. For now, however, we need only note that the question of resident judges is quite distinct from that of merger of the trial courts. Historically, County Court judges were resident in some centres. However, there is no necessary requirement that only County Court judges can be resident judges. It is possible for there to be resident judges of a new unified general trial court; and this, in fact, we shall propose.

Conclusion and Recommendation on the General Issue

2.26 On the general issue, therefore, we conclude that the process by which over time the jurisdictions and procedures of the two Courts have become substantially and increasingly similar should now be formally completed.

Accordingly, we recommend:

RECOMMENDATION 1

That there be a superior court of general jurisdiction in Manitoba to exercise all of the powers and discharge all of the

responsibilities now exercised and discharged by the Court of Queen's Bench and the County Courts of Manitoba.

Name of the Single General Trial Court

2.27 In our view, the single trial court of general jurisdiction should be named Her Majesty's Court of Queen's Bench for Manitoba. We make this suggestion for three reasons:

1. Although initially attracted by the notion that to mark substantially the commencement of a new, though evolutionary, phase in our legal history both existing Courts should be abolished and replaced by a new court, we have concluded that for practical reasons, the simplest and most efficient way to achieve the proposed unification with the minimum of delay and difficulty is by repeal of the County Courts legislation and enlargement of the membership and jurisdiction of the Court of Queen's Bench to take in the responsibilities and members of the County Courts.

2. While a completely new name for what in essence will be a new or different court might be symbolically valuable, we have after due consideration found no appropriate new name. "Supreme Court" invites confusion with the Supreme Court of Canada; "High Court" has no place in our tradition or experience in Manitoba. On the other hand, the name "Court of Queen's Bench" (while strictly not reflecting the heritage of equity law derived from the old English Chancery courts) is well-established with us, and suggests something of our legal heritage and the inherent and prerogative powers of the Court.

3. It has the further merit that it is the name now adopted for the equivalent general trial court in Alberta as well as in Saskatchewan.

Accordingly, we recommend:

RECOMMENDATION 2

That this court be called Her Majesty's Court of Queen's Bench for Manitoba.

The Cost of Civil Litigation

2.28 One of our major concerns has been the question of the cost of civil litigation to parties. We intend to discuss this matter more fully in our subsequent report on the adjudication of small claims which will include an assessment of the small claims jurisdiction under Part II of The County Courts Act , now handled principally by County Court clerks. In regard to the central issue considered in this Report, we have concluded that amalgamation of the two Courts need not of itself increase the cost of litigation. Moreover, we think that merger will create conditions better suited to control the cost of litigation in that, with a combined court, greater attention can be given to developing new procedures to simplify and expedite the preparation and settlement or trial of particular areas of litigation.

The Scope and Conditions of the Proposal; The Limits of Legislation as an Instrument of Change; Other Material Issues

2.29 The recommendation for a unified court, with certain ancillary recommendations, can be put into effect by appropriate provincial legislation and complementary legislation by Parliament and administrative action by the Government of Canada, of the type generally described in Chapter 4.

2.30 However, merger of the Courts will not by itself guarantee any improvement in the range, availability, frequency, or efficiency of court

services and sittings. It can only create the conditions and atmosphere for further progress by the Court. Nor can the proposed new Court effectively be created and realize its potential advantages solely through enactments. Other steps, that cannot be taken by legislation alone, will be necessary. In particular, there will have to be special provision for a system of judicial assignments and circuits and an administrative plan for the implementation of the proposal for merger or fusion.

2.31 The administration of the new Court and the organization of its business will, after fusion occurs, be a matter for the Court itself; on such matters, we shall venture no further than to make such general observations and suggestions as we think might be helpful to the Court once it is constituted.

2.32 We think it necessary, however, to speak in some detail about judicial districts, court centres, resident judges, and judicial circuits. These topics relate to each other, and all relate to the central concept of the single Court. They will be discussed in the following Chapter.

2.33 It is our view, expressed more fully later, that merger or fusion is not an end in itself; it is only a necessary step or precondition to making the judicial system even more efficient and accessible, and must be accompanied by other measures, of which the most important is a new system of judicial assignments and circuits, in which resident local judges and judges resident in Winnipeg would both, in different ways, participate. Accordingly, this Report should be read as recommending <u>both</u> the creation of a single "Section 96" trial Court and a new system by which that Court may manage and schedule its business. Both concepts should be considered together; the first without the second would be incomplete and unfulfilled.

CHAPTER 3

SPECIAL ISSUES AND CONCERNS

General Background

3.01 There are, broadly speaking, two special issues to which we devote attention in this Chapter. The first relates to the basic organization of the new Court; the residence of the judiciary and details concerning judicial districts, centres and circuits are dealt with. As noted in Chapter 2, we see our recommendations in these areas as integral to the amalgamation of the two section 96 trial Courts. The second issue in this Chapter pertains to the Surrogate Courts of Manitoba. We submit recommendations with respect to its reform in the event of amalgamation.

3.02 We feel it necessary to provide a brief summary of the organization of the County Courts and Court of Queen's Bench throughout Manitoba. Effective administration of justice is a matter of concern not only to those who are professionally involved with the courts, who will be well informed, but also to a great many others who may have only a sketchy knowledge of its structure.

3.03 The Court of Queen's Bench is divided into five judicial districts, each district having a centre. These judicial districts ("J.D.") and their respective centres are: Eastern J.D. (Winnipeg); Western J.D. (Brandon); Central J.D. (Portage la Prairie); Dauphin J.D. (Dauphin); and Northern J.D. (The Pas). There are 16 County Court districts: Swan River, Dauphin, Russell, Minnedosa, Virden, Killarney, Brandon, Portage la Prairie, Morden, Winnipeg, St.Boniface, Selkirk, Beausejour, The Pas, Flin Flon and Thompson.

3.04 All judges of the Court of Queen's Bench reside at or near Winnipeg. However, sittings are held in each of the centres of the 5 judicial districts.

In the County Courts, all but three judges reside at or near Winnipeg. The three notable exceptions are found in the County Court districts of Dauphin, Brandon and Portage la Prairie. The resident judges in these three districts also serve other districts than those to which they are principally connected. That is, the resident judge in Dauphin serves the district of Swan River. As judge of the North, he also serves the Flin Flon, The Pas and Thompson districts. The resident judge in Portage la Prairie serves the district of Morden and, on special assignment, Brandon, while the judge in Brandon sits in the County Court districts of Virden, Russell, Minnedosa and Killarney. As noted in Chapter 2, resident County Court judges act as local judges of the Court of Queen's Bench and so have jurisdiction to hear uncontested divorces (as do County Court judges of Winnipeg) and other functions so provided by The Court of Queen's Bench Act and Rules, and not excluded by section 103(1)(f) of that Act.

3.05 The chief officer of the two Courts is the Prothonotary-Registrar and Chief County Court Clerk who is also Clerk of the Peace and Clerk of the Crown and Pleas. In Winnipeg, the staff of the Queen's Bench and the County Courts was amalgamated in 1979. Elsewhere the clerks act for the Court of Queen's Bench, the County Courts and the Provincial Judges' Court, where applicable.

Resident Judges

3.06 In Brandon, there is perceived to be a need now for a second resident judge. The family law list in Brandon is dealt with only because of regular visits by the resident judge from Portage la Prairie to hear divorce petitions. In Dauphin, the resident judge has the further responsibility of serving Northern Manitoba with all the travel and communication problems which occur in serving this large region. It is clear that to ensure the maintenance of existing levels of service to litigants and lawyers, there must continue to be at least one resident judge in each of Brandon and Dauphin.

3.07 It may be that the needs of the Central District could be met, so far as trials are concerned, by service from Winnipeg and Brandon. However, we would prefer to leave any such change to future evolution and experience.

For the present, we believe retention of the resident judgeship in Portage la Prairie is necessary to ensure that the Court will continue existing levels of service and be no less visible than it is now. As well, retention will ensure the continued residency of the incumbent judge, who should be able to remain in tenure in the centre in which he serves.

Accordingly, the Commission recommends:

RECOMMENDATION 3

That there continue to be resident judges in Brandon, Portage la Prairie and Dauphin when the new Court is established.

3.08 We are of the view that no one now a judge of the County Courts or the Queen's Bench should be required to change residence unless (s)he consents to that change. We would also go further by stating that no judge of the new Court, once appointed, should be required to change residence without that judge's consent. Similar recommendations to these were made in the Saskatchewan report on amalgamation.

We accordingly recommend:

RECOMMENDATION 4

That no one now a judge of the County Courts or Court of Queen's Bench be required to change residence unless (s)he consents to that change.

RECOMMENDATION 5

That no judge of the new Court, once appointed, should be required to change residence without that judge's consent.

3.09 The consensus of the Northern District Bar is that a resident judge is required in Northern Manitoba. We agree with their position. It is essential that lawyers and members of the public in the North have ready access to a judge and this would best be ensured by providing for a resident judge who could have an appreciation of the special character and requirements of the northern communities.

We accordingly recommend:

RECOMMENDATION 6

That there be a resident judge in Northern Manitoba.

3.10 The determination of the place of residence of the Northern resident judge is a very difficult question. The problem is that in terms of travel, population distribution, and the location of lawyers and legal institutions, the North is two areas, not one. In some ways, Flin Flon/The Pas and Thompson/Lynn Lake are more closely connected to Winnipeg than to each other. The obvious solution to the question of location would be to have a resident judge in each of Thompson and The Pas, but we cannot conclude that present case volume warrants this. We have also considered the possibility of not having a resident judge, but providing for the North to be served from Winnipeg by judges designated as "northern" judges and available by telephone for consultation. However, this option does not command the confidence of the Northern District Bar.

3.11 Each of The Pas and Thompson have strong claims. The Pas is the established place of Queen's Bench sittings, is the location of a penal institution, is proximate to the substantial community of Flin Flon, and has an established Legal Aid office. Thompson, on the other hand, is perhaps a more central location in the North, geographically speaking, than The Pas. Although its prospects and economic history have been variable, it may be the preferable place of residence for potential appointees. Whichever of these two communities is chosen, the appointment of a resident judge in Northern Manitoba

combined with the new system of judicial assignments and circuits should allow for greater judicial access in both The Pas and Thompson and, indeed, throughout the North. We would add a practical suggestion that greater use be made in various matters of telephone conference calls.

Judicial Districts

3.12 Earlier we stated that there were 5 districts of the Court of Queen's Bench and 16 County Court districts. Saskatchewan has adopted the concept of a single 'district' encompassing all of the province. Within that district there are designated centres by which the place of filing of pleadings and trial of actions is determined. We are of the view that a "one-district system" would be beneficial if amalgamation takes place. It could provide for greater flexibility in the administration of the new Court throughout the province and avoid complications should new centres be created and old ones closed. Centres should not be fixed inflexibly by legislation, but rather should be susceptible to change through administrative means to allow for shifts in court volumes.

Accordingly, we recommend:

RECOMMENDATION 7

That there be one judicial district for the Province.

RECOMMENDATION 8

That within that district there be designated centres.

RECOMMENDATION 9

That the centres be those designated from time to time by the Lieutenant-Governor-in-Council on recommendation of the new Court but initially be those set forth in recommendation 11.

RECOMMENDATION 10

That upon appointment to the new Court, all judges be appointed to the one district rather than to any centre but that this recommendation be read subject to recommendations 4 and 5 regarding the place of residence of judges.

Judicial Centres

3.13 We now attempt to address the need to retain the present complement of County Court districts as centres for sittings of the new Court. Our immediate discussion is confined to the issue as to whether to continue all County Court districts as centres by which the places of trials are determined. We raise the issue later under this heading as to whether the offices should be retained in all present County Court districts for the filing of pleadings.

3.14 A number of factors must be considered in determining the appropriate centres as places for sittings for the new Court. Location and proximity to other centres, current and projected court volume and present and proposed facilities for sittings are all relevant considerations. So too are other, less tangible elements such as the importance of a court's presence in the community, the impact on the stature and vitality of smaller communities when an existing service is lost, and the balance of convenience between parties and witnesses on the one hand and judges and officers of the court in travelling to various locations for trials, on the other hand. These latter elements should be taken into account but we do not believe that they are for the Commission to assess.

3.15 The statistics, however, available to the Commission provide some evidence of the low court volume in the districts of Russell, Virden, Killarney and Beausejour. For instance, in 1981 the number of statements of claim and

statements of defence filed were as follows:

Killarney-	81/20
Russell-	46/6
Virden-	38/7
Beausejour-	26/6

Aside from court volume, the facilities are poor in most of these districts. Killarney and Virden can be easily served by Brandon; travel is manageable even in winter conditions. Russell can be served by Minnedosa; the local Bar is small and does not engage heavily in a litigation practice. Beausejour can be served directly from Winnipeg. We are therefore of the view that the districts of Russell, Virden, Killarney and Beausejour should not initially be retained as places for sittings.

3.16 The Commission is of the opinion that Morden (Morden/Winkler) should be retained as a centre of the new Court. The area has a substantial population and a Bar of some size, but is relatively remote from both Winnipeg and Portage la Prairie. We also think that Minnedosa and Swan River should be retained. With respect to Minnedosa, there is a reasonable volume of cases (85 statements of claim and 29 statements of defence for 1981), acceptable facilities for sittings, and proximity to Russell and other points not to be designated as centres. Swan River should be kept to maintain convenient court services in the Dauphin area at (at least) current levels. As for Flin Flon, it should be retained but its usefulness as a centre should be examined after amalgamation is implemented. The boundaries of the Flin Flon district were altered on October 1st, 1981 and, accordingly, there should be an assessment of its desirability as a centre once its case volume can be reasonably determined.

Accordingly, we recommend:

RECOMMENDATION 11

That the judicial centres for sittings of the new Court be the following:

-Winnipeg
-St.Boniface
-Brandon
-Dauphin
-Portage la Prairie
-Morden
-Minnedosa
-The Pas
-Thompson
-Swan River
-Selkirk
-Flin Flon

3.17 The Commission is of the view that greater flexibility may be desirable in determining the place of trial of a civil action. The present rule is that the trial of a civil action will take place in the judicial district in which the cause of action arose (in whole or in part), or in which the defendant resides or carries on business unless the court otherwise orders (this rule does not apply to an action for the recovery of land). We put forward the following proposals so that they can be considered by the new Court:

1. Generally, the trial of a civil action could take place at the judicial centre nearest to the place where the cause of action arose or where the defendant resides or carries on business.

2. Should the parties agree in writing to a change in venue, then, subject to overiding judicial discretion, the agreed location could become the place for the trial of the action.

3. In the event the parties are unable to agree in writing to a change of venue, the Court may, upon the application of either party, make an order changing the venue of the action if it is satisfied there is just and reasonable cause to do so.

4. The appropriate venue under (2) or (3) need not be limited to the list of judicial centres for sittings of the new Court. If the parties agree to have their trial heard in Virden, for example, or any community in which there are appropriate facilities where a trial may be conducted then, subject to overriding judicial discretion, they could be allowed to do so.

We think these proposals have merit in that they would increase the Court's accessibility throughout the Province. It is the prerogative of the new Court to determine their desirability and feasibility, possibly after consultation with the Bar.

3.18 In the event amalgamation takes place, changes to the provisions regarding the filing of pleadings will need to be considered. The rules regarding the place of filings are the same as those pertaining to the location of trials and, accordingly, our remarks concerning the current provisions for the location of trials and our suggestions for change of these provisions apply, mutatis mutandis to the filing of pleadings.

3.19 There are, however, two additional issues concerning the filing of pleadings which require discussion. The first concerns the matter of the four districts which we recommended be no longer retained as centres for sittings of the new Court. The offices in these locations serve the Provincial Judges Court (Criminal and Family Divisions) and it may be appropriate to retain these offices as "satellite offices" of the new Court for the filing of pleadings. There is a further matter concerning the filing of pleadings that we wish to raise. There is no central repository in the province for pleadings but rather the appropriate district office retains the only copies. The Dauphin Bar Association has recommended that each of the major centres should become a central repository for the filing of pleadings with satellite offices or locations presently served by County Court offices. This would mean that a defendant in Dauphin, for example, could file pleadings there despite the fact the statement of claim was issued in Swan River, a satellite office. A further proposal we have received is that Winnipeg should become the sole repository for the whole Province so that pleadings could be filed at any centre. This would be similar to the present system in the Federal Court of

Canada. We make no formal recommendation on these issues but again put forward these proposals for consideration.

Judicial Circuits

3.20 The most important collateral measure to amalgamation is, in our view, the implementation of a system of judicial circuits and assignments. Combined with the arrangement for resident judges in Brandon, Portage la Prairie, Dauphin and the North, it results in the most effective way to ensure that areas outside Winnipeg will be properly serviced. Our views are confirmed by such observations as we have been able to make of the experience of the relatively new single superior courts in Alberta and Saskatchewan.

3.21 We see the adoption of a circuit system to be beneficial in at least five respects. First, it will ensure that in areas outside Winnipeg, lawyers and the public will not be entirely dependent on one person for judicial service. Experience elsewhere has shown that problems can develop should the local Bar, or some members of it, lose confidence in or find themselves in an antagonistic relationship to the one judge before whom they must regularly practise. (Happily, there is no problem of this type in any centre in Manitoba.) Second, circuits will enable the new Court to cope flexibly and efficiently with work as it develops variously, in type and volume, in different centres. Third, it will also give local resident judges the advantage of a diversified experience. Fourth, the Court as a whole will be more closely linked in a collegial spirit, and the desired degree of uniformity in the Court's practices and expectations of counsel will be more readily maintained. Finally, circuits will allow bilingual judges to conduct trials in French when requested by francophones who reside in areas outside of the centres of Winnipeg and St.Boniface.

3.22 We think that the development of a comprehensive and flexible circuit system is quite feasible in the new Court. With an enlarged court, work will be able to be distributed without any undue or novel burden falling on any

single judge or any drastic disruption of the existing patterns. We envisage that the amount of circuit time for individual judges will not exceed the circuit time currently expended by the present judges of the Queen's Bench.

Accordingly, we recommend:

RECOMMENDATION 12

That there be a new system of judicial circuits and assignments involving all members of the judiciary of the new Court of Queen's Bench.

3.23 Without prescribing a detailed description of the circuit system, we hope the following comments may be of assistance:

-the schedule of circuit assignments should try to retain as much as possible the flexibility now enjoyed in centres outside Winnipeg, with delegated powers in the resident judge to fix trial appointments, etc., within his own generally scheduled local sitting time.

-a comprehensive annual or semi-annual list or schedule for the larger Court as a whole could make it easier, administratively, to build into the schedule fixed time periods in which each judge would be free from regular duties to work on judgments, to have vacation, or to attend seminars and conferences.

-in a comprehensive schedule, some judges could at material times be booked as available or unassigned, so that they could at fairly short notice undertake to sit, in Winnipeg or elsewhere, to fill in for an ill colleague or to help the Court cope with unexpectedly heavy workloads.

-all of the four judges resident in centres outside Winnipeg should spend a part of their "circuit time" in Winnipeg. This would foster the collegiality of the Court, judicial education, and other desirable developments.

-the schedule of assignments could be designed so that circuits need not generally involve extended travel or absence. For example, a judge in Winnipeg could sometimes only be scheduled to sit in Morden, or Portage la Prairie when the judge resident in that centre is sitting elsewhere. Similarly, the judge resident in Brandon could be scheduled to sit sometimes only in Dauphin or Portage la Prairie, when their resident judges are sitting in Winnipeg or elsewhere.

-in the initial days of the Court, it may be presumed that judges of the old Courts will continue to do the bulk of the specialized work with which they are particularly familiar; but, within a fairly short time, functional or specialist divisions of work will develop informally on other lines within the Court.

The Surrogate Courts of Manitoba

3.24 The Surrogate Courts are vested with jurisdiction in relation to wills and estates. The Province created the Surrogate Courts in 1881 to ease the workload of the Queen's Bench. When they were created, the Legislature specifically reserved to the Court of Queen's Bench its jurisdiction in testamentary matters, which encompassed all powers incidental to the English Court of Probate as of July 15, 1870.

3.25 The appointment of judges to the Surrogate Courts and the determination of their stipends is the jurisdiction of the Province. At present, the judges of the County Courts serve as judges of the Surrogate Courts. Each

surrogate office has a registrar, and deputy clerks and deputy registrars, if necessary. Aside from Winnipeg, the offices of the Surrogate Courts also serve as County Court offices. Given the extensive overlap, consideration of the effect of amalgamation on surrogate work becomes necessary.

3.26 The majority of the Commission favours the amalgamation of the Surrogate Courts of Manitoba with the new superior Court. Few administrative changes will be required as a result of amalgamation given the overlapping of offices and personnel. The judges of the new superior Court will exercise the powers of surrogate court judges, which they are empowered to do now. Amalgamation will make some statutory amendments necessary and we describe these in Chapter 4.

We accordingly recommend by a majority:

RECOMMENDATION 13

That the Surrogate Courts of Manitoba be amalgamated with the new Court of Queen's Bench.

3.27 We wish to offer one comment concerning surrogate practice in the North. Presently, testamentary documents are filed in The Pas where they are transferred to Dauphin where the County Court judge resides. (This is sometimes an inconvenience, but we are told that estates in Flin Flon tend to be uncomplicated and substantially similar, and that there is not a large number of estates in Thompson because of the relative youth of the population.) If a resident judge is appointed in the North, as we have recommended, a change in the system of filings will be required in Northern Manitoba.

CHAPTER 4

IMPLEMENTATION OF REFORM

4.01 We discuss in this Chapter the implementation of the recommendations we have advanced in this Report. Subject to a few exceptions, we merely list the matters which must be attended to, rather than to submit formal recommendations concerning the manner of their execution.

4.02 Broadly speaking, a check-list for the implementation of amalgamation would include the following matters:

-provincial legislation directly concerning the two Courts;

-consequential provincial legislation, amending all statutes that mention the County Courts or confer power on them ;

-amendment of the Judges Act (federal), and other laws;

-provincial administrative action, with respect to court facilities, service and budget;

-federal executive action, particularly with respect to the issue of new patents of appointment to the new Court;

-action by the new Court, some concurrent with the Lieutenant-Governor-in-Council, with respect to rules, circuits, assignments, designation of judicial centres, and so on.

4.03 Amalgamation will require a number of legislative amendments. Although the drafting of these should be left to the expertise of Legislative

Counsels at both the provincial and federal levels, we provide for a broad recommendation concerning amendment to primary legislation.

We recommend:

RECOMMENDATION 14

That creation of the new Court of Queen's Bench be achieved, so far as legislative action is concerned, by:

a) repeal of The County Courts Act and The County Court Judges' Criminal Courts Act;

b) amendment to The Queen's Bench Act or the repeal thereof and the enactment of a new Act;

c) repeal of The Surrogate Courts Act;

d) necessary amendment to The Court of Appeal Act;

e) necessary consequential legislation.

RECOMMENDATION 15

That the Government of Manitoba request the Government of Canada to amend the Judges Act (federal) and any other federal laws necessary for the creation of the new Court of Queen's Bench.

In the Appendix attached to this Report we set forth some of the more important distinctions in the statutory powers conferred upon the County Courts and the Court of Queen's Bench. This may be consulted in determining the necessary consequential legislation although we stress it lists only some of the more important variations between the two Courts and is therefore not complete.

4.04 Amalgamation will involve changes to the rules of court. Rule-making is the prerogative of the judiciary and quite outside our mandate. We venture no further than to suggest that it may be necessary, as an interim measure, to enact a legislative provision validating the present Queen's Bench Rules, except insofar as they are inconsistent with the new legislation. It may also be thought desirable to incorporate the Rules of the Surrogate Court into the new Queen's Bench legislation.

4.05 There are a number of administrative matters which need attending to by the executive, judicial and administrative arms of government. In varying degrees of importance, these include the appointment of clerks to be clerks of the Queen's Bench, provision for new gowns, relettering of signs, reprinting of new stationery, and the like. The definition and designation of judicial centres and the interim establishment of new circuits and assignment lists will also need to be organized. Patents of appointment by the federal government should not be restricted to particular centres, as is the case generally now with judges of the County Courts. Instead, judges should be appointed to the one judicial district which we have recommended should encompass the whole province.

4.06 The administration of the new Court of Queen's Bench will entail substantially more work for the Chief Justice, although in total we believe there will be less in the early stages of the new Court after amalgamation than now borne separately by the Chief Justice and the Chief County Court Judge. However, as the potential of the new Court to extend court services, to monitor the progress of cases through the system, and to respond quickly to changes in caseloads is progressively realized, the burden on the Chief Justice will increase yet further.

Accordingly, we recommend:

RECOMMENDATION 16

That consideration be given to the appointment of an Associate Chief Justice to the new Court of Queen's Bench.

4.07 It is obvious that a transition period will be required between the time legislation is passed and its effective date. Not only are there many administrative details to implement, but there will also need to be amendments passed by the Parliament of Canada, as mentioned earlier. Based upon experience in Saskatchewan and Alberta, we recommend:

RECOMMENDATION 17

That there be a transition period of at least six months between the date legislation is enacted and when it becomes effective.

It would also be beneficial if legislation came into effect while the Court is observing its vacation. In Saskatchewan, for example, amalgamation took place on July 1st of last year. We think that if merger took place during court vacation it would allow for a less onerous period to make all the necessary changes and consequently provide for a smoother adjustment phase.

CHAPTER 5

SUMMARY OF RECOMMENDATIONS

The recommendations of the Commission are as follows:

1. That there be a superior court of general jurisdiction in Manitoba to exercise all of the powers and discharge all of the responsibilities now exercised and discharged by the Court of Queen's Bench and the County Courts of Manitoba.

2. That this court be called Her Majesty's Court of Queen's Bench for Manitoba.

3. That there continue to be resident judges in Brandon, Portage la Prairie and Dauphin when the new Court is established.

4. That no one now a judge of the County Courts or Court of Queen's Bench be required to change residence unless (s)he consents to that change.

5. That no judge of the new Court, once appointed, should be required to change residence without that judge's consent.

6. That there be a resident judge in Northern Manitoba.

7. That there be one judicial district for the Province.

8. That within that district there be designated centres.

9. That the centres be those designated from time to time by the Lieutenant-Governor-in-Council on recommendation of the Chief Justice of the new Court but initially be those set forth in recommendation 11.

10. That upon appointment to the new Court, all judges be appointed to the one

district rather than to any centre but that this recommendation be read subject to recommendations 4 and 5 regarding the place of residence of judges.

11. That the judicial centres for sittings of the new Court be the following:

- Winnipeg
- St.Boniface
- Brandon
- Dauphin
- Portage la Prairie
- Morden
- Minnedosa
- The Pas
- Thompson
- Swan River
- Selkirk
- Flin Flon

12. That there be a new system of judicial circuits and assignments involving all members of the judiciary of the new Court of Queen's Bench.

13. That the Surrogate Courts of Manitoba be amalgamated with the new Court of Queen's Bench.

14. That creation of the new Court of Queen's Bench be achieved, so far as legislative action is concerned, by:

a) repeal of The County Courts Act and The County Court Judges' Criminal Courts Act;

b) amendment to The Queen's Bench Act or the repeal thereof and the enactment of a new Act;

c) repeal of The Surrogate Courts Act;

d) necessary amendment to The Court of Appeal Act ;

e) necessary consequential legislation.

15. That the Government of Manitoba request the Government of Canada to amend the Judges Act (federal) and any other federal laws necessary for the creation of the new Court of Queen's Bench.

16. That consideration be given to the appointment of an Associate Chief Justice to the new Court of Queen's Bench.

17. That there be a transition period of at least six months between the date legislation is enacted and when it becomes effective.

This is a Report pursuant to section 5(2) and (3) of The Law Reform Commission Act signed this 25th day of October 1982.

Clifford H.C. Edwards, Chairman

Knox B. Foster, Commissioner

D. Trevor Anderson, Commissioner

Richard Thompson, Commissioner

Geraldine MacNamara, Commissioner

M. Anne Riley, Commissioner

NOTE: In view of his position, His Honour Judge G.H. Lockwood did not attend any of the meetings nor take part in any of the discussions dealing with the matters covered in this Report. He is therefore not a signatory hereto.

APPENDIX

Comparison of the Statutory Jurisdiction of The Court of Queen's Bench and the County Courts of Manitoba

In this Appendix we provide a summary of the similarities and distinctions in the statutory jurisdiction conferred upon the two section 96 trial Courts. This summary is not an exhaustive one but is merely illustrative of the comparative powers exercised by these two Courts. For ease of reference, we have catalogued this summary into four areas: appeals, family law, criminal law and miscellaneous.

1. Appellate Jurisdiction

We set forth below 18 examples of where the Legislature has conferred appellate jurisdiction exclusively upon the County Courts and 46 instances where authority is vested solely in the Court of Queen's Bench. Again, we emphasize that these are not exhaustive, but provide some sampling of the respective powers bestowed upon each Court. By way of comparison, we note that of the provisions listed, one-third of those pertaining to the County Courts apply to appeals from decisions involving the suspension of licences (6/18) and over one-half (26/46) of the Queen's Bench powers listed below involve licensing. Most of the appeals of licensing decisions which may be heard by the Queen's Bench involve suspensions of members of professional or occupational associations (20/26 in our list). Conversely, the County Courts' appeal authority is generally confined to business licenses (the provisions listed for The Farm Machinery and Equipment Act and The Forest Act are two examples). Two areas of appeal jurisdiction vested in the County Courts are noteworthy. The Court has sole jurisdiction to hear appeals from the decisions of the Licence Suspension Appeal Board regarding suspensions of drivers' licenses; it also hears appeals from decisions involving The Payment of Wages Act . There are no appeals from the County Courts to the Queen's Bench.

It should be stated that The Court of Queen's Bench has exclusive authority, as part of its inherent jurisdiction, to order the prerogative remedies of certiorari, prohibition and mandamus, among others. While admittedly these are remedies for the judicial review of administrative bodies, the grounds of review are often similar in effect to those provided by statutory-based appeals.

Here are the examples of the appeal jurisdiction vested in the two courts:

The County Courts of Manitoba

The Animal Husbandry Act, C.C.S.M. c. A90, s. 124(6)
The Business Names Registration Act, C.C.S.M. c. B110, s. 15(1)
The Change of Name Act, C.C.S.M. c. C50, s. 4(3)
The Employment Standards Act, C.C.S.M. c. E110, s. 35(19)
The Farm Machinery and Equipment Act, C.C.S.M. c. F40, s. 14(5), s. 35.1(11)
The Fires Prevention Act, C.C.S.M. c. F80, s. 57(7), s. 57(13)
The Forest Act, C.C.S.M. c. F150, s. 41(5)
The Highway Traffic Act, C.C.S.M. c. H60, s. 253(6)
The Mental Health Act, C.C.S.M. c. M110, s. 26(1)
The Municipal Act, C.C.S.M. M225, s. 66.1(3), s. 295(10)
The Opthalmic Dispensers Act, C.C.S.M. c. O60, s., 21(1)
The Payment of Wages Act, C.C.S.M. c. P15, s. 16(1)
The Private Investigators Act, C.C.S.M. c. P132, s. 25(1)
The Public Health Act, C.C.S.M. c. P210, s. 24(1)
The Public Schools Act, C.C.S.M. c. P250, s. 5(4), s. 251, s. 250(1)
The Soldiers' Taxation Relief Act, C.C.S.M. S180, s. 4(4)
The Vacations With Pay Act, C.C.S.M. c. V20, s. 14(4)
The Vital Statistics Act, C.C.S.M. c. V60, s. 35(1), (3), (4)

The Court of Queen's Bench

The Agricultural Land Protection Act, C.C.S.M. c. A15, s. 10(1)
The Agrologists Act, C.C.S.M. cc. A50, s. 14(1)

The Buildings and Mobile Homes Act, C.C.S.M. cap. B93, s. 13
The Chartered Accountants Act, C.C.S.M. c. C70, s. 21(2)
The Child Welfare Act, C.C.S.M. c. C80, s. 46(6)
The Chiropractic Act, C.C.S.M. c. C100, s. 8(1)
The Clean Environment Act, C.C.S.M. c. C130, s. 16.1(2)
The Consumer Protection Act, C.C.S.M. c. C200, s. 87(1), s. 85(1)
The Corporations Act, C.C.S.M. c. C225, s.191(3), s.194(3), s.239, s.357(1)
The Credit Unions Act, C.C.S.M. c. C300, s. 167(2)
The Criminal Injuries Compensation Act, C.C.S.M. c. C305, s. 21(1)
The Dental Association Act, C.C.S.M. c. D30, s. 28(1)
The Dental Mechanics Act, C.C.S.M. c. D35, s. 12(1)
The Registered Dietitians Act, C.C.S.M. c. D75, s. 40(1)
The Election Finances Act, C.C.S.M. c. E32, s. 53(1)
The Embalmers and Funeral Directors Act, C.C.S.M. c. E70, s. 12(5)
The Engineering Profession Act, C.C.S.M. c. E120, s. 25, s. 26(5)
The Gasoline Tax Act, C.C.S.M. c. G40, s. 10(1)
The Hearing Aid Act, C.C.S.M. c. H38, s. 10(1)
The Human Rights Act, C.C.S.M. c. H175, s. 30(1)
The Jury Act, C.C.S.M. c. J30, s. 63.1(5)
The Land Surveyors Act, C.C.S.M. c. L60, s. 45(1)
The Medical Act, C.C.S.M. c. M90, s. 65(1)
The Metallic Minerals Royalty Act, C.C.S.M. c. M125, s. 38(1)
The Mines Act, C.C.S.M. c. M160, s. 40(1), s. 64(1)
The Mortgage Brokers and Dealers Act, C.C.S.M. c. M210, s. 31(5)
The Motive Fuel Tax Act, C.C.S.M. c. M220, s. 10(1)
The Municipal Assessment Act, C.C.S.M. c. M226, s. 59(1)
The Naturopathic Act, C.C.S.M. c. N80, s. 8(1)
The Occupational Therapists Act, C.C.S.M. c. O5, s. 20(1)
The Optometry Act, C.C.S.M. c. O70, s. 18(18)
The Pari-Mutuel Tax Act, C.C.S.M. c. P12, s. 8(2)
The Pharmaceutical Act, C.C.S.M. c. P60, s. 21(3), s. 43(3)
The Physiotherapists Act, S.M. 1980-81, c. 15, s. 44(1)
The Licensed Practical Nurses Act, C.C.S.M. c. P100, s. 42(1)
The Registered Psychiatric Nurses Act, C.C.S.M. c. P170, s. 43(1)
The Psychologists Registration Act, C.C.S.M. c. P190, s. 8(1)
The Real Estate Brokers Act, C.C.S.M. cc. R20, s. 9.1
The Real Property Act, C.C.S.M. c. R30, s. 159(1)
The Registered Nurses Act, C.C.S.M. c. R40, s. 42(1)

The Registered Respiratory Technologists Act, C.C.S.M. c. R115, s.45(1)
The Retail Sales Act, C.C.S.M. c. R150, s. 8(1)
The Securities Act, C.C.S.M. c. S50, s. 29(1), s. 29.1(1)
The Tobacco Tax Act, C.C.S.M. c. T80, s. 8(1)
The Veterinary Medical Act, C.C.S.M. c. V30, s. 15(1)
The Water Power Act, C.C.S.M. c. W70, s. 10(5)

2. Family Law

There is considerable concurrent jurisdiction between the two Courts regard to family law. Both Courts have almost identical authority provincial legislation regarding separation, property division, custody a maintenance (see The Marital Property Act , The Family Maintenance Act , T Married Women's Property Act and s. 105 of The Child Welfare Act . T distinction concerning partition and sale under sections 19-26 of The Law Property Act was essentially erased in April of this year (see Bill 5, An A to Amend the Law of Property Act).

There are still some differences of authority between the two Court however. The Queen's Bench hears applications under The Testators Fami Maintenance Act , and also committeeship applications under The Mental Heal Act . The County Courts have jurisdiction in adoption-related matters (s Part VI of The Child Welfare Act) and in applications regarding a spouse entitlement to property under The Dower Act.

As local judges of the Court of Queen's Bench, the judges of t County Courts have authority to hear proceedings in respect of "matrimoni causes or family law proceedings" (see Bill 28, An Act to Amend Various Ac Relating to Courts of the Province). This includes the hearing of divorce a alimony proceedings.

3. Criminal Law

Both Courts have jurisdiction to review bail orders from the Provincial Judges Court (Criminal Division). The Court of Queen's Bench has exclusive jurisdiction under the Code to hear bail applications for persons charged with murder, mutiny or hijacking, among others. It also has exclusive authority to hear charges tried by judge and jury.

Both Courts may conduct speedy trials (trials without a jury) but generally these are heard by judges of the County Courts. Only the County Courts are empowered to hear appeals from summary conviction offences.

4. Miscellaneous

Where injunctive relief is given to a court by statute, it is normally conferred upon the Court of Queen's Bench (see, for example: The Clean Environment Act , C.C.S.M. c. C130, s. 16.2(1); The Defamation Act , C.C.S.M. c. D20, s. 19(1); The Human Rights Act , C.C.S.M. c. H175, s. 34; The Industrial Minerals Drilling Act , C.C.S.M. c. I20, s. 9(1); The Oil and Natural Gas Tax Act , C.C.S.M. c. O35, s. 19).

This is also the case where the Legislature gives a court the power to appoint a receiver (see The Partnership Act , C.C.S.M. c. P30, s. 26(1); The Securities Act , C.C.S.M. c. S50, s. 27(1); The Water Supply Districts Act , C.C.S.M. c. W100, s. 17(3), for instance). The County Courts are sometimes given this authority, however (see The Builders' Liens Act , C.C.S.M. c. B91, s. 69(1)).

Almost all proceedings involving liens are heard in the County Courts (see The Builders' Liens Act , C.C.S.M. c. B91; The Farm Machinery and Equipment Act , C.C.S.M. c. F40; The Garage Keepers Act , C.C.S.M. c. G10;

The Threshers' Liens Act , C.C.S.M. c. T60; The Woodsmen's Liens Act , C.C.S.M. W190).

Constitutional references from the Lieutenant-Governor-in-Council are heard either by the Court of Queen's Bench or the Court of Appeal.